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Katrina damage ruling bad news for homeowners

By MICHAEL KUNZELMAN
Associated Press

GULFPORT, Miss. — A federal judge ruled today that an insurance company's policies do not cover damage from wind-driven water in a decision that could affect hundreds of upcoming cases related to property damage from Hurricane Katrina.

U.S. District Judge L.T. Senter Jr. ruled that a Mississippi Gulf Coast couple cannot collect damages from storm surge caused by Katrina because Nationwide Mutual Insurance Co.'s policies do not cover wind-driven water damage.

Senter Jr. said Paul and Julie Leonard of Pascagoula could be compensated for damage that they could prove was caused by high winds, however.

"Almost all the damage to the Leonard residence is attributable to the incursion of water," Senter wrote in the 13-page decision.

Senter's ruling could set a precedent for hundreds of other court challenges to the insurance industry for denying billions of dollars in claims after the Aug. 29 hurricane ravaged the coasts of Louisiana and Mississippi.

Although Senter ruled that Nationwide's policies do not cover damage from storm surge, the judge also concluded a key policy provision the company has used to deny coverage is ambiguous.

Nationwide and other insurers say their homeowners policies cover damage from a hurricane's wind, but not in cases where it resulted from a combination of wind and water.

"This reading of the policy would mean that an insured whose dwelling lost its roof in high winds and at the same time suffered an incursion of even an inch of water could recover nothing under his Nationwide policy," he wrote.

"From our perspective, it lifts a very large cloud of uncertainty that has been hanging over the insurance market of the Gulf Coast," Joseph Annotti, spokesman for the Property Casualty Insurers Association of America, said in reaction to the ruling. "A healthy insurance market is absolutely key to a rejuvenated economy down there."

Shares of most property and casualty insurers rose following the ruling, amid a generally surging stock market.

American International Group Inc. shares added 73 cents to \$62.43. Allstate Corp. shares gained 80 cents to \$57.22, St. Paul Travelers Cos. shares rose 93 cents, or 2.1 percent, to \$44.02, and Hartford Financial Services Group Inc. shares jumped \$1.01 to \$82.49, all on the New York Stock Exchange.

"It's a favorable first decision for the industry," said Fox-Pitt Kelton analyst Gary Ransom. "I never really had much doubt that this was the way it was going to work out. There's a lot of precedent for this. It's not like we're interpreting these contracts for the first time."

The Leonards had estimated the total damage to their home at \$130,253. They said \$47,365 in damage was caused by wind. Nationwide paid only \$1,661, blaming the remainder on the storm surge.

The couple's attorneys had asked for more than \$158,000 for the damage to the house and its contents, plus interest and attorneys' fees and expenses. Senter, however, ruled that Nationwide only owed the Leonards about \$1,228 more than what the company already has paid them for wind damage.

The Leonards claimed a Nationwide agent, Jay Fletcher, told them they didn't need flood insurance.

Senter rejected the Leonards' claim that the agent's alleged assurances make Nationwide liable for damage from both wind and water. Paul Leonard mistakenly inferred that his policy covered water damage, the judge ruled.

"Fletcher did not materially misrepresent the terms of the Nationwide homeowners policy to the Leonards, and Fletcher did not make any statements which could be reasonably understood to alter the terms of the Nationwide policy," Senter wrote.

The couple's lawsuit was the first among hundreds of Katrina insurance cases to be tried since the storm slammed into the Gulf Coast nearly a year ago, demolishing tens of thousands of homes.

Senter presided over an eight-day trial without a jury last month. He is hearing virtually all the Katrina insurance cases in Mississippi, so his ruling will be scrutinized by thousands of Gulf Coast homeowners as well as the nation's top insurers.

Insurer Wins First Case In Slew of Katrina Suits

Nationwide's Victory Will Likely Cheer Industry But May Not Set Precedent

By IAN MCDONALD

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The first decision among hundreds of post-Hurricane Katrina insurance-claim lawsuits came down in favor of the insurer. The decision will likely cast a shadow over coming cases and cheer insurance-company attorneys, but the wide-ranging nature of the various suits could limit the precedent-setting value of the ruling.

In the decision, the first of many "wind vs. water" suits, a Mississippi federal judge found that [Nationwide Mutual Insurance Co.](#) was correct to deny the majority of a claim filed by a Gulf Coast couple.

In these disputes, homeowners allege their claims were underpaid by billions of dollars because their homes were damaged or destroyed by the storm's high winds, which are covered under their insurance policies. Insurers, however, claim the damage was the result of flooding, which isn't covered in most standard homeowner policies. More than 100,000 homes were damaged or destroyed in Hurricane Katrina, which cost insurers about \$41 billion in claims.

Nationwide is one of several insurers named in similar suits, and the industry will likely see yesterday's decision as a weight off its back. "It's a very positive ruling for insurers doing business in the Gulf," said Joseph Annotti, a spokesman for the Property Casualty Insurers Association of America.

In yesterday's ruling, Judge L.T. Senter Jr. found that Nationwide owed Paul and Julie Leonard of Pascagoula, Miss., \$1,228.16 for wind damage to their home. After applying a \$500 deductible, Nationwide originally paid the Leonards \$1,661.17.

However, the couple were seeking more than \$158,000 to cover damage to their home and its contents, plus interest, attorney's fees and expenses. The Leonards' experts estimated that the damage totaled more than \$130,000, with more than \$47,000 attributed to wind, but Judge Senter attributed the damages to water that rose to five feet in the first floor of their home.

"Almost all of the damage to the Leonard residence is attributable to the incursion of water," Judge Senter wrote in his opinion filed in U.S. District Court in Gulfport. As a result, Nationwide was following the "express terms" of the policy, the judge wrote.

Additionally, Judge Senter found that the Leonards' local Nationwide insurance agent didn't mislead the couple in 1999 when he said they didn't need flood insurance, because the agent didn't say the Nationwide policy would cover flood damage.

The Leonards' lawyer, Richard Scruggs, didn't return several calls to his office seeking comment.

In a statement, Nationwide said it was "very pleased" with the ruling, adding that it "underscores just how important it is for all policyholders to carefully read and understand the terms of the coverage they purchase."

The influence of yesterday's decision could be less than expected, however, because the facts of the Leonard case differ from some others. In this case, the plaintiffs' house, more than 500 feet from the water, according to the judge's decision, remained standing after the storm. As a result, there was evidence that could be examined to determine whether wind or water had caused the damage. In many other cases, homes were more or less washed away, leaving only concrete slabs that were the homes' foundations.

"It's a big win for Nationwide in this case, but it doesn't really change the rules for other cases," says Randy Maniloff, an attorney who represents insurers in policy disputes with

White and Williams in Philadelphia. "Here you see a judge who recognizes that these cases are going to be decided on their individual facts."

If cases are looked at individually, outcomes will be tough to predict. In "slab" cases, for instance, Mr. Maniloff says variables like eyewitness accounts come into play. Mr. Annotti, the insurance industry spokesman, said the wind-water debate can be a tricky affair when only a slab is left. Investigators might look at the bolts that attached a destroyed house to the slab, for instance. Bent bolts can indicate the house was blown over, while straight bolts can be a sign that a house was washed away, he said.

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