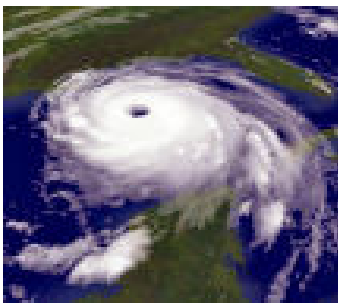


## Katrina Lawsuit to Go to Appeal

### U.S. Appeals Court Hears Arguments in Katrina Levee Lawsuits

By Michael Kunzelman, AP



NEW ORLEANS (AP) -- A federal appeals court judge on Wednesday promised a swift ruling in a case pitting New Orleans homeowners against insurance companies for their refusal to cover damage from the failure of levees in Hurricane Katrina's aftermath.

Rulings by the 5th U.S. Circuit Court of Appeals often take months, but Judge Carolyn King said "a prompt decision is very important" given that tens of thousands of residents could be affected by the levee litigation.

"This case is not just going to take its place in the queue. It's going to the head of the list," said King, one of three judges who heard arguments Wednesday from lawyers for policyholders and lawyers for several insurance companies.

In a November decision, U.S. District Judge Stanwood Duval Jr. sided with policyholders who argued that language excluding water damage from some insurance policies was ambiguous.

Duval said the policies did not distinguish between floods caused by an act of God -- such as excessive rainfall -- and those that are not, which would include the levee breaches following Katrina's landfall.

Duval allowed a lawsuit against The Allstate Corp., The St. Paul Travelers Companies Inc. and other insurers to proceed, but said the issue of "flood exclusion" could be appealed.

Insurers say that their homeowner policies do not cover damage from all types of flooding, including water from the levees that broke in the aftermath of the Aug. 29, 2005, storm.

"The generally prevailing meaning of the word 'flood' includes what happened during and after Hurricane Katrina in this city," argued Richard Doren, a lawyer for Lexington Insurance Co.

The insurance industry stands to lose an estimated \$1 billion in Louisiana if policyholders successfully challenge companies' refusal to cover damage from levee breaches, said Robert Hartwig, chief economist at the industry-funded Insurance Information Institute in New York.

Plaintiffs' attorney John Ellison accuses insurers of purposely not defining the term 'flood' and deliberately drafting vague policy language "to frustrate the reasonable expectations of Louisiana homeowner policyholders from whom they collected premiums for years."

"It's difficult to think of a more important or significant issue that needs to be resolved with respect to Louisiana law," Ellison said

Wednesday.

Doren noted that federally subsidized flood insurance policies are sold separately from homeowner policies that cover damage from wind but not flood water.

"There is no secret here. There is no mystery here. Floods are excluded under homeowner insurance policies," he said.

Judge Harold DeMoss Jr. asked Ellison whether the term "flood" is defined differently in flood insurance and homeowner policies. Ellison couldn't cite specific differences in the policy language, but he said that flood policies are "designed on the idea that the levees work."

Lexington attorneys argued in court papers that punishing insurers for failing to define common words like "flood" could force them to engage in "defensive over-specification, which would inevitably lead to longer policies that are less comprehensible to most policyholders."

Duval agreed last year to dismiss State Farm Insurance Cos. from the litigation. He ruled that State Farm's policies included language that clearly excluded all flood damage, regardless of the cause.

### A THREE JUDGE PANEL HEARD ARGUMENTS IN THE CASE.

The panel includes:

**Judge Carolyn King**, nominated to the court in 1979 by President Jimmy Carter.

**Judge Harold DeMoss, Jr.**, nominated by George H.W. Bush (a.k.a. "Bush Senior") in 1991.

**Judge Priscilla Owen**, nominated by George W. Bush (a.k.a. "Bush Junior") in 2005. Her nomination sparked much controversy as she rarely EVER rules against an insurer. She had been on the Texas Supreme Court where she authored horrific decisions that opened up the "flood gates" for insurers to commit bad faith without penalty.

If POA had to predict the outcome, we'd bet that this panel will come back with a 2-1 opinion in favor of the policyholders. Owen will be the only justice siding with the insurer.

The case is expected to be decided quickly.

**At issue in this case is whether insurance policies cover man-made floods, such as when levees are breached versus a natural floods such as tidal surges, waves and tidal waves.**

**The Fifth Circuit could decide to punt certain decisions in the case to the Louisiana Supreme Court while they consider the appeal.**