

Federal Judge in Mississippi 'Storm Surge' Case Upholds Home Insurance Flood Exclusion

By Andrew G. Simpson, Jr. Insurance Journal

A federal judge in Mississippi has upheld the water damage exclusion in homeowners insurance policies in a ruling welcomed by insurers.

U.S. District Judge L.T. Senter, Jr. of the Southern District of Mississippi denied a motion by plaintiffs Elmer and Alexa Buente for partial summary judgment in their lawsuit against Allstate Insurance Company. The Buente v. Allstate case centers on the actual cause of damage to the Buentes' home during Hurricane Katrina.

The court was asked to decide whether the entry of water into the plaintiffs' home was within the language of the flood exclusions and found that it was.

The Buente's home was severely damaged during Hurricane Katrina. They claimed that the damage to their home was caused in part by wind and wind driven rain and in part by rising water during the hurricane. The home was insured under a Deluxe Homeowners Policy issued by Allstate.

The policy contains an exclusion for damage attributable to inundation: "We do not cover loss to the [insured] property consisting of or caused by: Flood, including, but not limited to surface water, waves, tidal

water or overflow of any body of water, or spray from any of these, whether or not driven by wind. . . and water or any other substance on . . . the surface of the ground regardless of its source."

Plaintiffs claimed that these "flood exclusions" are ambiguous and are therefore unenforceable in the context of property damage sustained in Hurricane Katrina. They maintained that their property damage should be covered because it was a result of "storm surge." They contended that because the phenomenon of "storm surge" is not specifically listed as a peril excluded by the Allstate policy their water damage should be a covered loss.

But the court found that the flood exclusion language is clear and enforceable despite its not mentioning storm surge.

"Since the water that entered and damaged the plaintiffs' home was tidal water, I find that the damage caused by this inundation is excluded from coverage under the Allstate policy," wrote Judge Senter.

"The inundation that occurred during Hurricane Katrina was a flood, as that term is ordinarily understood, whether that term appears in a flood insurance policy or in a homeowners insurance policy. The exclusions found in the policy for damages attributable to flooding are valid and enforceable policy provisions. Indeed, similar policy terms have been enforced with respect to damage caused by high water associated with hurricanes in many reported decisions," he wrote.

Three national insurance trade organizations jointly filed an amicus brief in the case. The American Insurance Association, the National Association of Mutual Insurance Companies, and the Property

Casualty Insurers Association of America praised the ruling.

"In its ruling, the court held that the water damage exclusion in this policy is clear, unambiguous, 'drawn quite broadly' and with 'the clear purpose of excluding damage caused by inundation from coverage.' Citing numerous prior cases, the court concluded that, 'The exclusions found in the policy for damage attributable to flooding are valid and enforceable policy provisions,' the groups said in a joint statement.

"The court clearly is putting to rest the trial bar's unfounded argument in this and other cases that 'wind-driven water' or 'storm surge' is not covered by plain-language exclusions. Fortunately for all Mississippians, this ruling upholds the integrity of contracts in the state, and is further evidence that misinformed statements by plaintiffs' attorneys regarding long-settled homeowners policy language are meaningless in a court of law," the insurer groups claimed.

"This and similar rulings are the essential underpinnings for a rebuilt Gulf Coast, because such decisions retain the predictability and certainty that all businesses ? including insurers ? rely upon when deciding where to commit resources, such as capital and jobs," concluded the three trade groups.

