

The Policyholder Advocate



Policyholders of America

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BAD LAW

Appeals court strips more coverage from policies.

Wind damage now not covered if flooding also occurred.

POA



The 5th Circuit court (a federal appeals court based in New Orleans) has dealt another blow to coastal homeowners, nationwide. They ruled in favor of the insurance company (Nationwide) that wind damage is not covered under the policy if it happens to coincide with storm surge.

This ruling has insurance companies “high-fiving” one another because the decision will

be cited in an effort to dodge coverage of any storm loss that occurs anywhere in the United States.

This most recent ruling negates the ruling given by U.S. District Judge L.T. Senter more than a year ago, in the case known as Leonard v. Nationwide, the first Hurricane Katrina case to be tried in federal court in Gulfport, Mississippi. In the “Leonard” case, Judge Senter said that the policy language dealing with “anti-concurrent causation”¹ was “ambiguous and unenforceable”. After Senter’s ruling, insurers scrambled to settle similar claims.

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TESTING A PROPERTY? The ups and downs of mold testing

Testing your property may actually create a paper trail that could negatively impact your property value if and when you elect to sell your property. Why? Because most states require the seller disclose known defects or environmental problems prior to closing.

There is a way to avoid creating an unwanted trail of evidence and property owners need to be mindful of the options that exist and select the method of testing that is most appropriate.

Dodging the bullet

If you fit into any of these categories, you may want to test without the paper trail:

- ◆ suspicious that mold is causing health concerns and/or need to weed out other possible causes,

- ◆ need to determine a proper scope of repairs after water damage but before an insurance claim is filed, or
- ◆ currently listing or considering listing your property for sale.

Most analytical labs require an address of the subject property, leaving in the wake, a lasting piece of evidence. And, if you retain the services of a professional testing company, they too retain records for an extended period of time.

A way around the evidence trail is to (a) conduct your own sampling, and (b) send the sample(s) to a lab that does not require the address of the subject property.

There's no denying that so many homeowners do not test their properties be-

cause of the potential market value hit a positive result may cause — even at the risk of continued health concerns. It is for this reason, POA negotiated with a leading lab a testing option that does not require a property address.

Are positive test results still required for disclosure purposes? Yes, however without a paper trail, the only one who knows the result is you. POA does not endorse or recommend nondisclosure of a known problem however it is also not our role to play God.

[CLICK HERE](#) for discounted testing without the paper trail.

Documentation happens

Sometimes, documentation (and a paper trail) is not only necessary, it is beneficial.

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Appeals court strips more coverage...

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Nationwide promptly appealed Senter's ruling – taking the case to a more insurance-friendly audience sitting on the 5th Circuit. There, they got their wish list granted.

So, what does this all mean for you? It's simple: if you are to be paid for damage sustained in a storm, you must argue and prove that all damage was caused exclusively by wind BEFORE the flooding occurred.

How exactly does one PROVE wind did all the damage? In layman's terms, the homeowner or his/her agent must disregard any and all evacuation orders, put their lives at risk and document how and when the damage happened. Those who stay behind, while everyone else evacuates, will be called upon for their sworn testimony that all damage sustained to a property occurred because of wind, not rising water. All the better if photos are taken of the damage before and after the storm surge. (POA actually offers payment to those who cannot or will not evacuate and are willing to document a damage timeline.)

If a flood policy is in effect, it

covers up to \$250,000 in damage but that is usually woefully insufficient coverage for many coastal properties.

The office of U.S. Representative Gene Taylor (D-MS) issued a statement following the appellate ruling, saying the ruling strengthens the case for the Congressman's multi-peril policy legislation which will be debated by Congress this session.

According to Brian Martin, Rep. Taylor's policy director, "The appeals court is saying it is OK for a company to sell a policy that is likely to be worthless for a major hurricane if you also have flood risk. If the wind insurance does not cover wind damage, that means it is impossible to buy insurance and know that you are covered."

Martin goes on to say, "The flood policy is not supposed to pay for wind damage. Congress should ban any company with an anti-concurrent causation clause from participating in the flood program. I think this also helps our case that the anti-trust exemption has to go and the federal government needs to take over regulation of insur-

ance. Consumers and taxpayers need federal intervention."

Melinda Ballard, POA's president, agrees but noted another dangerous fall-out, "The ruling also forces many people to disregard evacuation orders made prior to a hurricane's landfall. Property owners who cannot afford to take the loss will stay behind to document the damage timeline in order to force insurers to honor the policies. Whether or not the 5th Circuit realizes it, their ruling has terrible consequences."

[CLICK HERE FOR THE RULING](#)

¹ Anti-concurrent causation is a provision in the policy designed to defeat or nullify coverage. The typical language in this provision leads like this: "We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss."

Rep. Taylor believes any insurer whose policies contain this provision should be banned from participating in the flood program. (Insurers who sell and service flood policies get paid nearly 1/3 of each premium dollar collected from the National Flood Program. This is gravy for participating insurers.

IN PLAIN LANGUAGE

What does this ruling mean for you?

If you are to be paid for damage sustained in a storm, you must argue and prove that all damage was caused exclusively by wind BEFORE the flooding occurred.

How do you PROVE wind did all the damage?

The homeowner or his/her agent must disregard any and all evacuation orders, put their lives at risk and document how and when the damage happened. Those who stay behind, while everyone else evacuates, will be called upon for their sworn testimony that all damage sustained to a property occurred because of wind, not rising water. If photos are taken of the damage before and after the storm surge, all the better. (POA actually offers payment to those who cannot or will not evacuate and are willing to document a damage timeline.)

But, because of a Louisiana Appeals Court ruling (see page 14) policyholders have some leverage to challenge the 5th Circuit ruling. The debate will continue.

New

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ERMI DNA Mold Analysis — \$190

Includes FREE 48 hour RUSH analysis & FREE FedEx Overnight Shipping

Clean Air Labs™ offers DNA analysis utilizing methods developed by the Environmental Protection Agency (EPA).

Various types of discounted analysis available. Re-

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http://www.policyholdersofamerica.org/before_I_test.htm

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