

# The Policyholder Advocate



**POA**<sup>TM</sup>

Policyholders of America

October, 2007 issue

## BAD LAW

### Appeals court strips more coverage from policies.

Wind damage now not covered if flooding also occurred.

POA



The 5<sup>th</sup> 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”<sup>1</sup> was “ambiguous and unenforceable”. After Senter’s ruling, insurers scrambled to settle similar claims.

*continued on page 2*

## Inside this issue:

COURT SAYS WIND ISN'T COVERED IF FLOODING IS INVOLVED.	1-2
MOLD TESTING UNDER THE MICROSCOPE	1, 20
SECRET TACTICS TO CHEAT CUSTOMERS ... ALL IN A DAY'S WORK	3-5, 15-20
THE HOMEOWNERS DEFENSE ACT AND THE MAN BEHIND IT	6-7
FEMA HIDES EVIDENCE OF TOXIC TRAILERS	8-9
OVERCHARGING THE US TAYPAYER (FEMA)	9-10
LEEVE BREACH SUIT GOES BYE-BYE	11
LOWBALL REPAIRS MAY COME TO AN END (XACTIMATE)	11
GOING WITHOUT COVERAGE	12-13
MS INSURANCE COMMISH RACE — THE ONE TO WATCH	14
LA APPEALS COURT AT ODDS WITH 5TH CIRCUIT ON COVERAGE	14
MOLD RELATED RESEARCH AND NEWS	21-24
SPILT COFFEE CASE REVISITED	25-28
STATE WATCH: CA, FL, GA, LA, NY, SC, TX	29-35

## 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.

*continued on page 20*

## Insurers secret tactics to cheat...

continued from page 19

It may interest readers to know that State Farm has thrown a complete hissy-fit over this article.

They claim the media is out to get them.

Unfortunately, from where we sit, POA believes this article is a wonderful example of well-researched and factual reporting.

way. To make their voice heard on federal regulation and other government decisions, insurers spent \$98 million on lobbying in Washington in 2006, according to Political-MoneyLine, a unit of Congressional Quarterly. That's the second-largest amount spent on lobbying by any group, behind \$114.4 million by pharmaceutical companies.

Property-casualty companies do want something from the government: bailouts. Insurers beseech states and the federal government to foot more of the bill for rebuilding private homes after natural disasters. Florida has a catastrophe fund that insures some homes to reduce payouts by carriers. The fund paid out about \$8.45 billion for storm damage in 2004 and '05, according to its annual report. The federal flood insurance program covers \$800 billion of property nationally, which helped the industry increase profits by 25 percent in 2005, the year of Katrina.

Homeowners whose properties

have been destroyed by catastrophes contend with low payouts, higher premiums, software programs that underestimate rebuilding costs and sudden changes in policy values--all of which have been calculated methods for insurers to increase profits.

Tunnell, the San Diego accounting teacher whose home burned to the ground, says she thought State Farm had adequately insured her family when they bought their three-bedroom house in 1992. She says the policy, destroyed in the fire, provided for "full replacement coverage." It guaranteed to rebuild the house, no matter the cost, she says. The company offered to pay \$220,000--which was \$121,600 less than a \$306,000 figure her family got from State Farm's own estimator, Hersum Construction Inc. of San Diego, for rebuilding the 1,700-square-foot house.

State Farm spokesman Supple says the company sent letters in 1997 to the Tunnells and

other policyholders saying that it would no longer offer full replacement coverage. "Policyholders, by regulatory order, were sent prominent notices of the coverage change at that time," he says. Tunnell says she doesn't recall being notified. She says her family debated hiring a lawyer and suing, and eventually decided the battle would be too stressful. The Tunnells took the \$220,000 and borrowed money to build a new house.

"Why is this happening to people over and over again?" Tunnell asks. "State Farm keeps underinsuring people, and they get away with it. This is unthinkable." As long as insurers make the rules and control the game, Tunnell and homeowners across the U.S. won't know whether their homes are fully insured, no matter what their policies say.

*David Dietz is a senior writer at Bloomberg News in San Francisco.*

## Testing ...

continued from page 1

If you fall into any of these categories, documentation must or needs to occur:

- ◆ homebuyer who wants to make certain you're not buying a lemon or if so, negotiate a lesser price to reflect the needed repairs,
- ◆ homeowner who wants to use the defect as a means of reducing property taxes,
- ◆ plaintiff in a lawsuit involving mold,
- ◆ policyholder who has already made a mold-related claim, or
- ◆ renter or occupant who is not the property owner.

Any homebuyer, renter or person appealing the property values needs documentation in order to negotiate with the owner, landlord or County Assessor's office, respectively. Anyone embroiled in litigation has no choice but to make public the results if the suit involves mold because testing results would be an integral part of the case. A policyholder who files a mold-related water damage claim is subject to CLUE -- a database of claims loss histories, over the course of five years, on properties and policyholders. Like it or not, a paper trail or evidence will exist.

[CLICK HERE](#) for discounted testing options that provide property-specific evidence.

If you decide to test a property, go into it with both eyes open, know the consequences of testing and weigh the many benefits before you bite off on it.

