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## Flood-damage ruling upholds insurer's exclusions

By Mark A. Hofmann

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GULFPORT, Miss.—A federal judge ruled Tuesday that an insurer does not have to cover water damage from Hurricane Katrina sustained by a policyholder who had not purchased flood insurance.

Under applicable Mississippi law, "to the extent property is damaged by wind, and is thereafter also damaged by water, the insured can recover that portion of the loss which he can prove to have been caused by wind, but the insurer is not responsible for any additional loss it can prove to have been later caused by water," wrote U.S. District Court Judge L.T. Senter Jr. in his decision in *Paul Leonard and Julie Leonard vs. Nationwide Mutual Insurance Co.*

The Leonards, who said their Pascagoula, Miss., home suffered more than \$130,000 in damage from Hurricane Katrina last year, sued Nationwide for water as well as wind damage even though the policy excluded water damage. The Leonards claimed they had been misled by their agent into believing they had coverage for water damage caused by storm surge. The agent had recommended that they not purchase flood insurance made available under the National Flood Insurance Program.

According to Judge Senter, Mr. Leonard "inferred, according to my understanding of his testimony, that both wind damage and water damage would be covered under his Nationwide homeowner's policy if the wind and water damage occurred during a hurricane." That inference was "erroneous," wrote the judge.

Judge Senter held that policy provisions that "exclude coverage for damages caused by water are valid and enforceable terms of the insurance contract." He said the Leonards were entitled only to \$1,228.16 for window damage and the expense of cleaning and repairing exterior walls above the water line where wind-driven debris had caused damage.

Insurers hailed the decision.

"In the insurance coverage debate over wind vs. water, Judge Senter's ruling has taken much of the wind, literally and figuratively, out of the plaintiff attorney's argument," said Ernie Csiszar, president and chief executive officer of the Des Plaines, Ill.-based Property Casualty Insurers Assn. of America, in a written statement. "Judge Senter has made it very clear that the flood exclusion applies to storm surge."

The ruling "validates the sanctity not only of insurance contracts in Mississippi, but all legal contracts in the state," said Cecil Pearce, vp of the Washington-based American Insurance Assn.'s southeast region in Atlanta, in a written statement. "This is a significant step forward for insurers and others committed to rebuilding after Katrina."

"The judge's decision serves to uphold the validity of the flood exclusion provision in insurance contracts, a principle that has been upheld by other courts and state regulators over the past 40 years," said Neil Alldredge, vp-state and regulatory affairs of the Indianapolis-based National Assn. of Mutual Insurance Cos.

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