

KATRINA FLOOD DAMAGES
NOT COVERED BY HOMEOWNERS POLICY,
FEDERAL JUDGE RULES

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On August 15, 2006, Judge L. T. Senter, Jr., of the United States District Court for the Southern District of Mississippi, ruled that an insurer's policy provisions that exclude coverage for damages caused by water are valid and enforceable terms of the insurance contract. The case, *Paul Leonard and Julie Leonard v. Nationwide Mutual Insurance Company*, Civil Action No.1:05CV475 LTS-RHW, arose out of claims the Leonards made to Nationwide, their insurance carrier, for damage to their residence in the wake of Hurricane Katrina in late August, 2005. The case culminated in a bench trial before Judge Senter, who ruled that almost all of the damage to the Leonard residence resulted from water, and was therefore excluded from coverage.

Paul and Julie Leonard reside in Pascagoula, Mississippi, in a home that is 515 feet from the beachfront to the south and 12 feet above sea level. On August 29, 2005, the Leonard house was severely damaged by Hurricane Katrina. At one point, the ground floor of their home was under 5 feet of water, damaging floors, carpets, walls and personal property. The Leonards' garage was also extensively damaged. There was a "golf-ball sized" hole in one ground floor window, and the exterior of the home suffered wind and water damage. The Leonards estimated they suffered \$130,253.49 in total property damage. Nationwide paid the Leonards \$1,661.17 for property damaged by wind but did not pay for any water related damage.

Paul Leonard testified at trial that, in 1999, he discussed a proposed increase in his wind/hail deductible with Jay Fletcher, the Nationwide representative with whom the Leonards did business. According to Leonard, Fletcher said the Leonards did not need to purchase flood insurance coverage. Although Fletcher did not explain why he discouraged Leonard from purchasing flood insurance, Fletcher routinely discouraged clients from purchasing such coverage unless they resided in areas that were most prone to flooding. The Leonards did not reside in such an area.

Leonard inferred that Fletcher discouraged him from buying flood insurance because the Leonards' homeowners' policy would cover water damage caused by hurricanes. However, Nationwide's billing statements, which were sent when the Leonards' policies were renewed, contained notices that the policy did not cover such losses and that flood insurance was available for purchase. Further, Paul Leonard testified he read his policy when he purchased it. The policy contained the following provision:

**Property Exclusions
(Section I)**

1. We do not cover loss to any property resulting directly or indirectly from any of the following. Such a loss is excluded even if another peril or event contributed concurrently or in any sequence to cause the loss.

...

b) Water or damage caused by water-borne material. Loss resulting from water or water-borne material damage described below is not covered even if other perils contributed, directly or indirectly, to cause the loss. Water and water-borne material damage means:

(1) flood, surface water, waves, tidal waves, overflow of a body of water, spray from these, whether or not driven by wind.

...

n) Windstorm or hail to any:

(1) structure, other than a building, including the supports and screens, with a roof-like covering of cloth, metal plastic or fiberglass, whether or not the structure is attached to the building.

(2) screens, including their supports, around a pool, patio or other areas.

(3) property lines and similar walls, including seawalls, greenhouses, hothouses, slathouses, trellis, pergolas, cabanas and outdoor equipment used to service the residence premises.

(4) structure, including property in or on the structure, which is in whole or part, in or over water.

...

2. We do not cover loss to any property resulting directly or indirectly from the following if another excluded peril contributes to the loss:

...

c) Weather conditions, if contributing in any way with an exclusion listed in paragraph 1. of this section.

The Court concluded that the exclusions were valid and enforceable contract terms. The Court noted that, under applicable Mississippi law, the Leonards may recover that portion of a loss that they can prove to be caused by wind, which is a covered loss, where the property sustains damage from covered and non-covered losses. Nationwide bears the burden of proving any damages it declines to cover fall within an exclusion.

Significantly, the Court concluded that “[a]most all of the damage to the Leonard residence is attributable to the incursion of water.” Therefore, Nationwide met its burden of proving that all but a *de minimus* amount of the Leonards’ claimed damages were excluded by provision 1(b) of the property exclusions quoted above.

The impact of this ruling remains to be seen, although it may well influence future decisions in other jurisdictions because Judge Senter presides over many Mississippi cases dealing with damages caused by Hurricane Katrina. In the greater Washington area, the appellate courts have faced other issues involving similar exclusions.

The Supreme Court of Virginia affirmed a trial court’s use of a similar exclusion to deny coverage to an insured whose docks were damaged in a hurricane. *Lower Chesapeake Assoc. v. Valley Forge Ins. Co.*, 260 Va. 77, 532 S.E.2d 325 (2000). One year later, that same court reversed a lower court ruling in the insured’s favor because the trial judge failed to consider each of the excluded cause of loss on an individual basis. *Transcontinental Ins. Co. v. RBMW, Inc.*, 262 Va. 502 (2001).

The Maryland Court of Appeals affirmed a lower court ruling in favor of the insured. The Court upheld the plaintiff’s qualifications to render expert testimony that the damages were caused by wind, which were covered, and not water, which were excluded by a similarly worded provision. *Continental Ins. Co. v. Kouwenhoven*, 242 Md. 115, 218 A.2d 11 (1966).

The District of Columbia Court of Appeals affirmed a trial court ruling in favor of the insurer who denied coverage to an insured who suffered property damage because of melted snow and rain. The court interpreted the phrase “surface water” in the exclusion and concluded, “any reasonable reading of the exclusion from coverage of losses attributable to surface water sustains [the insurer’s] denial of [the insured’s] claim.” *Cameron v. USAA Property & Cas. Ins. Co.*, 733 A.2d 965 (D.C. 1999).

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