In the News

Insurer Off Hook for Flood Damage

Hundreds more Katrina lawsuits pending

Damage from Hurricane Katrina's storm surge wasn't covered by a couple's insurance policy, a federal judge ruled in August.

That decision is likely to influence hundreds of upcoming cases involving disputes over whether storm damage was caused by wind — covered by most homeowner policies — or flooding, which is covered only by a separate policy purchased through the National Flood Insurance Program.

The homeowners in this case, Paul and Julie Leonard of Pascagoula, Miss., had property insurance but not flood insurance when Hurricane Katrina hit the Gulf Coast last year.

Located about 12 feet above sea level and 500 feet from the Mississippi Sound, the Leonards' house was flooded with 5 feet of water. The first floor had extensive damage; the second floor was untouched. The roof remained watertight despite some broken shingles. According to witnesses, the only break in the building envelope was a "golf-ball-sized" hole in one first-floor window. In addition, a combination of wind-driven and water-borne materials had dirtied the exterior of the house and attached garage. Experts hired by the Leonards pegged total damages at $130,253.49.

In a precedent-setting case, a federal judge rules that water damage from Hurricane Katrina wasn't covered by the homeowners' insurance policy.

The insurer, Columbus, Ohio–based Nationwide Mutual Insurance Co., determined that flooding had caused most of the damage but that wind had damaged some roof shingles and blown a tree down onto a fence. Accordingly, the company paid the Leonards $1,661.17, after a $500 deductible, to settle the claim.

U.S. District Court Judge L.T. Senter Jr. agreed with Nationwide that flooding caused most of the damage and that the Leonards' policy didn't cover flooding. He upheld the original payment, though he awarded the homeowners an additional $1,228.16 to clean portions of exterior walls that were soiled by wind-driven debris and to fix a broken window.

Another issue in the case was whether insurance agent Jay Fletcher should have advised his clients to purchase flood insurance. The

- The number of New Hampshire homeowners buying flood insurance has increased by more than 26 percent since May 2005. Spikes were seen after the deadly October 2005 floods in the southwest part of the state and after new flood-plain maps were released in June 2005. The only state with a higher increase in the number of policies was Mississippi, where purchases have jumped by 41.4 percent. Nationally, three times as many policies were written between May 2005 and May 2006 as were written between May 2004 and May 2005.

- Serial remodeling may be the new hobby of the ultra-rich; some of these home-owners have been known to rip out and redo a room almost as soon as a remodel is finished. Of the $238 billion that NAHB predicts will be spent in the U.S. on remodeling in 2006, a large part will come from the very affluent: Figures from the U.S. Census show that the wealthiest households spend about three times as much on home improvement as members of the second-highest income group.

Hurricane Katrina left many homes — like this one near Gulfport, Miss. — in tatters. Billions of dollars are now at stake in lawsuits over the exact source of the damage. Most homeowner insurance policies cover damage caused by wind but not by flooding.

judge found that neither Nationwide nor Fletcher misrepresented the terms of the policy, and that neither party was responsible for the homeowners' apparent belief that their policy covered all hurricane water damage.

However, the judge also ruled that two provisions in the Leonards' policy weren't clear. These clauses, which are used by other insurers as well, seem to exclude coverage for losses from wind damage that occur in combination with flood damage.

In his opinion, Judge Senter wrote, "The most reasonable interpretation … is that this policy provides coverage for windstorm damage … and that coverage is not negated merely because an excluded peril (in this case storm surge flooding) occurs at or near the same time." Although Nationwide didn't deny coverage to the Leonards based on these provisions, the ruling could set a precedent for other cases.

Thousands of homeowners involved in hundreds of Katrina-related lawsuits are waiting to go to trial. Judge Senter, who will be hearing most of the hundreds of federal cases in Mississippi, has sent a letter to some 180 lawyers asking for suggestions on how "to secure a just, speedy, and inexpensive resolution of these cases."

The faster the cases can be decided, the sooner the homeowners can start rebuilding. But whereas the Leonards' home was relatively intact, with physical evidence available, many other homes were obliterated. That will make determining how much damage was due to wind and how much to water all the more difficult. — *Laurie Elden*

- Free plasma TVs, hardwood floors, and granite countertops are among the incentives developers are using to attract customers in the current slow housing market. Now California builder Clarum Homes is giving this marketing ploy a green twist by offering free Toyota Prius hybrids to buyers of the five remaining energy-efficient homes for sale in its Pajaro Vista development.

- The moldiest state in the country is Texas, followed by Florida, Oklahoma, and South Carolina, says American Risk Management Resources, an insurance brokerage firm headquartered in Wisconsin. The company based the ranking on an analysis of insurance claims in the U.S. Coincidentally, Wisconsin has the lowest "relative hazard mold ranking," followed by West Virginia and Alabama.

- At your next company party, just say no when the paint thinner is passed around. Dale Angus, an employee of Spence Carpentry and Joinery in Melbourne, Australia, was burned at a holiday party last December when a co-worker sprayed him with paint thinner, which was ignited by a nearby open flame. Angus and three fellow partiers were "placed on a 12-month good behavior bond and ordered to take a one-day health and safety course," according to a report on the Web site News.com.au.

- A sweep of St. Lucie County, Fla., job sites in July netted three arrests for working without workers' comp, 15 cease-and-desist orders for using unauthorized workers, and two $2,500 citations for unlicensed contracting. State, county, and local regulators jointly conducted the investigation.

Registration Time for Rogue Rhode Island Contractors

Rhode Island's contractor registration law just got tougher, with stricter requirements for registration and higher penalties for noncompliance.

The most significant aspect of the legislation is the beefed-up enforcement power it gives the state Contractors' Registration Board. In the past, the CRB could levy small fines but do little else; now it's authorized to withhold or revoke registration, levy heftier fines, and put liens on property held by a contractor. Under the new provision, it can fine a contractor the following amounts:

- up to $5,000 for being unregistered and up to $10,000 for a second offense;
- $500 per occurrence for using the word "licensed" (unless used in connection with a licensed trade, like plumbing) instead of "registered" in an ad;
- $10,000 for providing false information on the registration form or fraudulently claiming to be registered;
- the greater of actual damages or the face value of the contract, after a hearing, for breaching a contract or failing to complete a construction project.

Another addition to the law requires contractors to write a contract for all projects that exceed $1,000 in value (measured in labor and materials). Violations are punishable by a fine of $1,000.

As in the past, contractors who are registering must supply (when applicable) account numbers for workers' comp, unemployment insurance, and state withholding tax, as well as a federal employer I.D. number. But now they also must submit a valid insurance certificate for the type of work being performed — with a minimum requirement of $500,000 in public-liability and property-damage coverage.

The Rhode Island Builders Association, which supported the changes, reports that 12,239 contractors are registered in the state, but more than 15,000 aren't. Says Edgar Ladouceur, association president, "We now have legislation that is much, much better for the homeowner and for our industry. It's definitely much worse for the outlaw contractors." — *L.E.*

■ Solar energy got another boost in California this summer with the passage of SB 1, dubbed the Million Solar Roofs Bill. The law requires municipal utilities to offer solar rebates — an expansion of the state's Solar Initiative (*In the News,* 04/06), which applied only to publicly traded utilities. SB 1 also increases the net-metering cap, allowing some 500,000 solar-energy system owners to sell excess electricity back to the utility, and requires home builders to make solar panels a standard option on any project of 50 units or more by 2011.

■ Gypsum Recycling America has opened a facility in Cambridge, Mass., to recycle gypsum from scraps of new paper-faced wallboard. The company, a subsidiary of Denmark-based Gypsum Recycling International, offers covered containers and haul service for large quantities of scrap; contractors can drop off smaller volumes at the warehouse for $10 per cubic yard. USG has contracted to purchase the reprocessed gypsum powder and use it in the manufacture of new wallboard.

■ Second-home sales have hit a slump, *The New York Times* reported in August. Vacation houses, such as those in the Hamptons and in Florida, are sitting on the market longer, and some sellers are reducing their asking price by hundreds of thousands of dollars. Economists and realtors blame the downturn on the large number of speculators selling investment homes, along with a combination of higher interest rates, increased energy costs, and a slowing economy.

A Peek Inside Today's Luxury Home

Owners of U.S. homes worth more than $1 million ($2 million in California) cracked open their doors to the rest of us in the 2006 Coldwell Banker Previews International Luxury Survey.

The most common feature of these manses? A security system. Eighty-six percent of the 300 homeowners surveyed reported owning one.

Sixty-five percent of the respondents said they had a designer kitchen and 37 percent either had or were considering adding a wine cellar. Fifty-nine percent said they had an entertainment room; 89 percent of those rooms were big enough for more than six people, 57 percent included a wet bar, and 24 percent had movie-theatre–style seats.

Sixty-seven percent of the respondents reported keeping their grounds professionally landscaped, perhaps to enhance the setting for their in-ground swimming pool (owned by 37 percent of respondents) or hot tub (owned by 35 percent). — *L.E.*

- Consumers will spend about $22 billion this year on luxury bath remodels, reports the *Kitchen & Bath Business* 2006 Market Forecast. And that's not necessarily flushing money down the toilet. Adding a half bathroom can increase the value of a home by 10 percent, according to NAHB, and a full bath can up the value by 19 percent. An extra bath adds even more value if a house has fewer bathrooms than bedrooms.

- The New York Electrical Contractors Association appointed its first woman president in May. Gina Addeo, president and owner of GMA Electrical Corp., also has the distinction of being the first woman in New York to earn a Master Electrician's license.

- Since July, the IRC 2000 has been part of the New Hampshire statewide building code. The Home Builders and Remodelers Association of New Hampshire, the state's Building Officials Association, and various consumer groups supported its adoption.

Wisconsin Limits Impact Fees

Two new laws signed this year by Wisconsin Governor Jim Doyle restrict the types of projects that local municipalities — cities, villages, towns — can finance with impact fees and effectively ban counties from imposing any fees at all.

Whereas the old rules, passed in 1993, allowed municipalities to collect fees for "parks, playgrounds, and other recreational facilities," the new legislation redefines that category more narrowly as "parks, playgrounds, and land for athletic fields."

Transportation projects face similar restrictions: New roads are now the only transportation-related infrastructure that can be funded by impact fees. And vehicles are no longer considered an eligible capital expense, so impact fees can't be used to purchase new fire trucks.

The laws also change impact-fee due dates and tighten up accounting requirements.

In the past, the fees were usually collected when a building project was approved; now they won't be due until the building permit is issued. The new rules set a time limit of seven years for spending the fees, although a community may qualify for a three-year extension if it can show extenuating circumstances.

Local municipalities will be required to have separate interest-bearing accounts for each impact fee, and will need to report collections and spending as part of their annual budget.

Supporters of the new legislation say that the changes will lower the cost of new homes and decrease impact-fee abuse. Opponents counter that the restrictions will make planning more difficult and will ultimately result in higher property taxes. — *L.E.*

One Ugly Deck. This Kentwood, Mich., deck may not look like your typical award-winner, but in the 2006 Ugliest Deck in America contest, it was a shoo-in for first place. Dale and Julie Owsinski, owners of the dilapidated example of 1970s backyard architecture, won a $10,000 makeover from Sikkens Decorative Coatings.

Californians looking for an affordable place to live might consider moving to Indiana. The NAHB/Wells Fargo Housing Opportunity Index shows that housing affordability went down slightly nationwide in the second quarter of 2006 as the median home price stayed the same and the average mortgage rate went up. Los Angeles County was the nation's least affordable metro area: Only 1.9 percent of the homes sold were affordable to the county's median-income families. This is a sharp contrast to Indianapolis, the most affordable metro area, where 87.4 percent of the homes sold were affordable to median-income families. Reacting to the report, the California Building Industry Association called on state lawmakers to lower regulatory costs and open more land to development.

Building Costs Climb

You may have noticed that your job costs have been going up much faster than your grocery bill. That's because prices of construction materials increased at almost twice the rate of inflation from July 2005 to July 2006.

August figures from the Bureau of Labor Statistics show that the producer price index (PPI), a measure of wholesale-price inflation, rose 4.2 percent and the consumer price index (CPI) rose 4.1 percent in the 12 months ending July 31.

During the same period, prices for construction materials and components rose 8.3 percent.

The news was even worse for specific construction inputs. According to Ken Simonson, chief economist for the Associated General Contractors of America, prices for copper and brass shapes, used in wire and plumbing materials, shot up 88 percent from July 2005 to July 2006. Gypsum, found in wallboard, went up 23 percent in price; plastic, 20 percent; steel, 18 percent; and aluminum, 15 percent.

The high cost of diesel fuel, up 26 percent in the August PPI report, continues to inflate prices further by raising delivery costs.

Lumber and panel prices, on the other hand, have come down, softening some of the effects of the increases. The Random Lengths framing lumber composite price was $291 per thousand board feet on August 12; it had been $363 a year earlier. The structural panel composite price fell from $350 to $288 in the same period.

The upshot? Builders "should not assume inflation is going away," says Simonson in a statement issued after the PPI report was released. "For many of these materials, cost increases have been accelerating, not subsiding." He advises builders to "get realistic about budgeting for higher construction costs." — *L.E.*

Production Builder's Earnings Fall

Pennsylvania-based Toll Brothers announced in August that its net income was down 19 percent in the three months ending July 31 compared with the same quarter last year. The luxury-home builder cited "an oversupply of inventory and a decline in confidence" as reasons for the lower earnings.

Despite the drop in revenue, company chairman and chief executive officer Robert I. Toll expressed confidence in the overall strength of the housing market, pointing to relatively low mortgage interest rates, a large pool of potential home buyers, and a sound economy.

Still, the company appears to be scaling back its plans for next year: It expects to deliver fewer homes in fiscal year 2007 than it did in fiscal year 2006 — 7,000 to 8,000 compared with 8,600 to 8,900. Moreover, it intends to continue reducing its inventory of building lots, already down from 91,200 lots at the end of April to 82,900 lots at the end of August. — *L.E.*

■ Under a state law effective August 1, West Virginia home inspectors need to be certified by the State Fire Commission. To gain certification, all inspectors must pass the National Home Inspection Exam, carry liability insurance of at least $250,000, and earn 16 hours of continuing education each year. The law, which follows guidelines set by the American Society of Home Inspectors and the National Association of Home Inspectors, also dictates a minimum list of items that must be included in each inspection.

■ By claiming to sell high-quality wood flooring at discount prices, Cornelius Coleman Martin III bilked more than 122 people over the Internet. According to Georgia Attorney General Thurbert Baker, customers paid Martin between 50 and 100 percent of the purchase price up front, and got unusable, substandard materials in return — when they got anything at all. The scam, through Web sites such as BeaverFlooring.com, caught up with Martin, who was sentenced to 20 years and ordered to pay more than $500,000 in restitution.

RESOURCES

Free Guide to Mudsill Anchors

Simpson Strong-Tie Co. has developed a new training kit, "Introduction to Mudsill Anchors," that covers basic installation of mudsill anchors and more specific techniques to use with the company's products.

Like Simpson's two other kits — "Basic Fastener Installation" and "Introduction to Joist and Beam Hangers" (see *In the News,* 11/05) — the mudsill kit is part of the NAHB National Housing Quality Certified Training Materials Program. All three sets contain instructor and student guidebooks, plus a training video in VHS or CD-ROM format. Materials are presented in both English and Spanish. Builders who are not interested in participating in the training program can order just the CD or the video, without the booklets.

For more information, call 800/999-5099, or go to www.strongtie.com and click "training."