

Briefs and Other Related Documents

Andrews Insurance Coverage Litigation Reporter

October 21, 2005

Hurricane Katrina

MISS. COUPLE SUES INSURER ON KATRINA FLOOD DAMAGE

Leonard v. Nationwide Mut. Ins. Co.

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A Mississippi couple whose home was severely damaged by Hurricane Katrina argues in a state court lawsuit that Nationwide Insurance Co. denied their claim despite promising "full and comprehensive coverage" for hurricane wind, rain and storm surge.

Leonard et al. v. Nationwide Mutual Insurance Co. et al., No. 2005-2021-JB, complaint filed (Miss. Chan. Ct., Jackson County Oct. 4, 2005).

The insurer, in what the complaint calls a "glib" response to the claim, said the damage was caused by "water" or "water-borne material," and was not covered under the homeowner's policy issued to plaintiffs Paul and Julie Leonard.

"Nationwide's coverage position is without merit and defeats the whole purpose for obtaining insurance expressly for 'hurricane' damage in the first place," the Leonards maintain.

They say their payment of a 2 percent "hurricane deductible" entitles them to coverage.

The plaintiffs say, "The so-called 'water' or 'water-borne' exclusion, which Nationwide defines in the subject policy as 'flood, surface water, waves, tidal water, overflow from a body of water, spray from any of these, whether or not driven by wind,' is not applicable here and in any event, is modified by the 'Hurricane deductible.'"

The complaint also asserts that storm surge -- "a commonly known and referred to peril that has been associated with hurricanes for centuries" -- is covered under the policy.

The Leonards say that on Sept. 7, nine days after the storm struck, Nationwide sent them a "hurricane coverage and deductible provision endorsement," which attempted to exclude storm-surge damage for the October 2005 to October 2006 policy period.

This plaintiffs note that this "conveniently new" endorsement, not in effect during Hurricane Katrina, "conclusively establishes" that storm-surge damage was not excluded when the hurricane hit.

The complaint also cites the "cunningly cryptic and jumbled" flood exclusion and insists that Nationwide should not be allowed to rewrite the policy to retroactively exclude covered damage.

The plaintiffs are represented by Richard F. Scruggs, Sidney A. Backstrom, Zach Scruggs and David Shelton of the Scruggs Law Firm in Oxford, Miss.; and James W. Backstrom of Denham, Backstrom, O'Barr & Hollingsworth in Ocean Springs, Miss.

Company: Nationwide Mutual Insurance Co.

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[2005 WL 2661842 \(Complaint for Claims Uniquely Vested in Chancery Court by Mississippi's Constitution, Including Declaratory and Injunctive Relief, Specific Contractual](#)

Performance, Indemnity, Unjust Enrichment, Reformation, Fraud and other Equitable
Relief Bestowed Expressly to Chancery Court by the State's Constitution), Trial Pleading
(October 04, 2005)
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