

Hundreds of insurance lawsuits still pending in MS. at 4th anniversary of Katrina

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OCEAN SPRINGS — It was just another in the rush of federal suits against Mississippi insurers last August, just before the three-year statute of limitations after Hurricane Katrina expired.

Except it wasn't. Without a lawyer, then-77-year-old Maralou Richards of Ocean Springs filed a handwritten complaint against a unit of AIG, at the time the world's largest insurance company.

Richards made a confidential settlement in June with Lexington Insurance Co., the court record shows.

But she's still unhappy. "I wanted to find out if the law is really for the people, and it's really not," she said.

Lexington did not respond to requests for comment. Hunter Compton, one of the obile lawyers who defended Lexington, also declined, citing in part the confidential settlement.

Though Richards' case is over, the federal courthouse in Gulfport remains clogged with insurance-related lawsuits. Four years after the storm, no one can say when the legal disputes will end, and a case before the Mississippi Supreme Court could give plaintiffs more traction.

Long waits are not uncommon in insurance litigation, said Amy Bach, executive irector of United Policyholders, a California-based advocacy group. She cited a suit stemming from a 2003 California wildfire that reached trial only this year.

"Some cases get resolved incredibly fast and some of them get bogged down," Bach said.

There are more than 200 insurance cases pending in the federal district court division in Gulfport, court records show. Not all stem from Katrina, but most do.

The deadline to file directly in federal court was Aug. 29, 2008, the three-year anniversary of the storm, and 48 cases are more than a year old. But many more cases were filed in Mississippi state courts and moved to federal court in the last year.

By comparison, records show 23 such cases pending in Mobile federal court, three older than a year.

Still, the cases remaining are only a tiny minority of Katrina claims.

Private companies and the state insurer of last resort paid almost \$8.2 billion in claims by Aug. 1, 2006, according to the Mississippi Insurance Department, while the National Flood Insurance Program paid almost \$2.4 billion more.

Of the combined \$10.6 billion, 72 percent was paid on claims in Mississippi's three coastal counties. About half of 480,000-plus claims statewide came from Jackson, Harrison and Hancock counties, regulators said.

Richards, an Ocean Springs native, had inherited a house at 7 Gulfview Drive. First constructed in the 1950s, it had been enlarged seven times, most recently by Richards herself.

The sprawling one-story red brick structure backed up to Sweet's Bayou, a tidal inlet just north of the Mississippi Sound. Richards left it the Sunday before Katrina arrived, headed for another house she owned north of U.S. 90 in Ocean Springs that had a garage to shelter her car, she said. She returned Monday afternoon, while the hurricane was still blowing, to find heavy damage.

She quickly concluded that most of the problem was caused by hurricane winds, saying she had observed while at the other house that storm surge didn't begin to rise until around noon, after hours of gales and gusts.

"To me, it was obvious what happened," she said. "The door was blown in and the windows were blown out."

She acknowledges that storm surge pushed water into the house, but disputes insurers' claims that it was 7 feet deep inside the house, whose floor is 16 feet above sea level.

Richards' case encapsulates one of the central dilemmas of Katrina disputes. When a house was damaged by some combination of water and wind, with separate insurers covering each, who should pay what? Lexington and adjusters for the National Flood Insurance Program blamed water. The federal flood insurer paid Richards \$154,000, the limit of her policy.

Most wind insurers have a clause in contracts saying they don't have to pay for damage caused by a combination of wind and water. Some say they don't cover even the wind-related ills that water was strong enough to cause. Such anti-concurrent causation clauses are increasingly under fire, and a case before the Mississippi Supreme Court involving Katrina damage to the home of a Long Beach couple could weaken or kill such provisions.

There's also some evidence that lawyers for policyholders have gotten better at trying Katrina cases, sharing information and pinpointing areas where insurers might be vulnerable.

Lexington's initial offer for damage on Richards' home was \$6,705.71. After three years of contention, the company eventually paid Richards about \$62,951 for structure damage and another \$30,800 for loss of use — still far below the policy's combined \$335,400 limit.

Richards said her struggle to get that much money was maddening, and after one particularly difficult conversation, it dawned on her she was going to court to seek more.

"I thought, dadgum it, I'm going to have to sue these people," she said. Richards said she didn't hire an attorney in part because she didn't want to share a percentage of any award as a contingency fee. But she struggled to represent herself against experienced lawyers.

"Certainly, it's a very hard way to go," said Bach, who said other policyholders typically represent themselves when they can't find

lawyers to take their cases. "The success rate is very, very low, I would hazard to guess."

Richards said the case went to arbitration twice. She rejected one settlement offer before accepting another because, she said, she was afraid the judge would kick the case out before it could reach a jury. How much did she get?

"I'm supposed to say 'I settled with them, period,'" Richards said.