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## Katrina Victims Say Agents Advised Against Flood Coverage

By JOSEPH B. TREASTER

GULFPORT, Miss., July 13 — Six weeks before Hurricane Katrina tore up the Gulf Coast of Mississippi last August, Dr. Munson Hinman went to see his insurance agent to buy flood coverage for his home near the beach.

He had a blank check in his pocket, but, Dr. Hinman testified in Federal District Court here on Tuesday, the agent talked him out of buying the coverage.

“He didn’t tell me directly not to get it,” Dr. Hinman recalled. “But in a roundabout way he said it wasn’t necessary. He was emphatic about that it wasn’t necessary.”

Dr. Hinman, a chiropractor, was testifying in a lawsuit against Nationwide Insurance that could force the Ohio company and other insurers to pay out billions of dollars for claims of flood damage from Hurricane Katrina and other storms that they have previously denied. Mr. Hinman’s home was heavily damaged in the hurricane.

The insurers have said their policies specifically rule out coverage for floods.

But Richard F. Scruggs, a Pascagoula lawyer who rose to prominence as he helped win a \$250 billion settlement from the tobacco industry a few years ago, argues that in selling home insurance with many references to windstorms and hurricanes, Nationwide and other insurers led customers to believe that any hurricane damage — whether from wind or water — would be covered.

That perception was reinforced, Mr. Scruggs said in an interview, by agents who suggested to customers like Dr. Hinman that they did not need to buy the separate coverage for flood damage that is provided by the federal government and sold through agents.

“They thought they had all they needed,” Mr. Scruggs said.

Representing Nationwide, Daniel F. Attridge, a lawyer for the Chicago firm of Kirkland & Ellis, argued in court that the company’s home insurance policy was unambiguous in its exclusion of flood damage.

For wind damage alone from Hurricane Katrina, the insurers are paying more than \$30 billion and the federal government expects to pay another \$25 billion to those homeowners in the region who bought separate flood insurance policies.

Katrina is already the most costly hurricane ever. But tens of thousands of residents who lost their homes have been left without money to rebuild because the insurers say most of the storm damage came from flooding rather than high winds. Many

homeowners are applying for federal grants.

The lawsuit against Nationwide is unfolding before Federal Judge L. T. Senter Jr. of the Southern District of Mississippi in a city still crippled from the storm. Its downtown is filled with patched-up buildings, many of them empty. Many streetlights and phones are still not working. Piles of rubble rise two stories high along some side streets.

The new concrete and glass federal courthouse was also damaged by the hurricane and has yet to reopen fully.

Many homeowners have complained that they received less than they expected for wind damage because they were told by their insurers that they were entitled to receive payments only for damage to roofs and other parts of their house above the highest water stains on their walls.

Mr. Scruggs addressed that issue on Wednesday by leading a private meteorologist, Rocco Calaci, through a detailed accounting of the movement of wind and waves along the Mississippi on Aug. 29, 2005, as Hurricane Katrina struck.

According to Mr. Calaci's testimony, hurricane-force winds battered the coast for hours before water rushed over the land, knocking down houses and trees. High winds, he said, continued for several more hours after the water had receded.

Several people who rode out the storm in their homes testified earlier that, in their neighborhoods near the Alabama border, the water rose slowly and gradually to more than five feet in their homes.

That was in contrast to the sudden surge of water, three stories high, that smashed across the beach around Bay St. Louis and Waveland to the west, at the Louisiana border.

But all along the Mississippi coast, residents say, their homes suffered heavy wind damage long before the water began to rise.

Testimony in the trial began Monday and may continue into next week. By agreement of both parties, Judge Senter is serving as judge and jury.

The lawsuit pits Nationwide against a couple from Pascagoula, Paul Leonard, a police lieutenant, and his wife, Julie, who runs a child care business. They estimated their modest two-story house suffered \$130,000 in damage that Nationwide says was mostly from floodwater.

The Leonards' lawyers estimate that \$72,000 of the damage came from wind. But they say the insurance company is obliged to pay the whole \$130,000. The Leonards' lost another \$28,000 in furnishings and clothing, they said. The insurance company has so far paid them \$1,600 to account for the loss of a few roof shingles and at least one broken window.

The Leonards' lawsuit is the first to go trial in a dispute that may eventually involve thousands of plaintiffs and dozens of lawyers.

Mr. Scruggs — who is arguing the case with his son Zach; a colleague from northern Mississippi, Don Barrett; and John Jones from Jackson, Miss. — said he had already filed suit on behalf of about 2,000 clients seeking redress from their insurers, including Senator Trent Lott, who is both a neighbor of Mr. Scruggs in Pascagoula and his brother-in-law; and Representative

Gene Taylor of Bay St. Louis.

Many of those attending the trial are lawyers for other clients and they are taking detailed notes.

Mr. Scruggs, whose waterfront home was heavily damaged by Katrina, said he chose to pursue the claims individually or, perhaps eventually in groups, rather than as a class action mainly because it could take years to receive court certification for a class action. "Time is of essence," Mr. Scruggs said in the interview. "These people need the insurance money to rebuild."

Dr. Hinman, who lives near Mr. Leonard, testified that he received nearly \$137,000 from Nationwide shortly before the trial.

Joe Case, a spokesman for Nationwide, said the company decided to resolve Dr. Hinman's complaint that he had been misled by adjusting his claim as if he had bought flood insurance. But Mr. Case said the company continued to dispute that others had been treated unfairly.

Testifying as the first witness on Monday, Mr. Leonard said he asked his Nationwide agent, Jay Fletcher, whether he needed flood insurance shortly after Hurricane Georges in 1998.

"He told me I didn't need it," Mr. Leonard told the court. The two men did not discuss the issue again, and part of Nationwide's defense in the lawsuit is that the statute of limitations has run out for Mr. Leonard.

In an interview, Mr. Scruggs said that advice provided by the insurance agent, who is not a defendant in the lawsuit, amounted to an expansion of the home insurance contract, and signaled to Mr. Leonard and other customers that nothing more than the homeowners' policy was needed for hurricane protection.

Mr. Attridge, the lawyer representing Nationwide, said Mr. Fletcher was not authorized to expand the coverage, and Mr. Fletcher never explicitly told clients that their policies would protect them from hurricane flooding.

Lawyers for Nationwide also acknowledged that Mr. Fletcher himself had not bought flood insurance. By the time of Katrina, the lawyers said, Mr. Fletcher had sold flood insurance to 180 of his 1,200 Nationwide home insurance customers. Along the Mississippi coast, fewer than 20 percent of all homeowners bought flood insurance and many now say they thought their home insurance policies would cover any kind of hurricane damage.

Mr. Case, the spokesman for Nationwide, said the lawyers for hurricane victims were "trying to muddy the waters with a great deal of information."

He added, "We hope the court will find Nationwide acted appropriately."

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