Florida Court Decision Remains a Matter of Concern for Insurance Providers in Louisiana and Mississippi

Mierzwa & Proximate Causation: A Ray of Hope for Insurance Victims in Louisiana and Mississippi

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TAMPA, FL (January 31, 2006) - Although not binding on courts in Louisiana and Mississippi, the Florida decision in Mierzwa v. Florida Windstorm Underwriting Association, 877 So.2d 774 (Fla. App. 4th Dist. 2004) is instructive and a matter of concern for those insurance providers that have collected premiums from their Gulf Coast policyholders for decades and now, in their time of need, refuse to pay the claims of these very same policyholders for damage caused by Hurricanes Katrina and Rita. Under Florida's Valued Policy Law, Mierzwa held that if any portion of a total loss was caused by a covered peril under a standard policy, then the insurer was required to pay the face amount of the standard policy, even if the majority of the damage to the insured building, structure, mobile home or manufactured building resulted from an excluded peril, such as water damage.

The principal purpose of Florida's Valued Policy Law is to establish the measure of damages in case of total loss. In order to achieve this purpose, the Valued Policy Law requires the insurance provider to ascertain the insurable value at the time of writing the policy. The Valued Policy Law serves to remove what would otherwise be a very troublesome and difficult issue to resolve either between the parties by negotiation or by the courts in litigation. In short, when a policyholder pays for full coverage on their home and they suffer a total loss, they ought to be reimbursed for the total loss.

In Mierzwa, the Florida appellate court found that the meaning of Florida's Valued Policy Law was "simple and straightforward." If the building is insured by an insurer for a covered peril and the building is deemed to be a total loss, the Valued Policy Law mandates that the insurance provider is liable to the owner for the face amount of the policy, no matter what other facts are involved as to the cost of repairs or replacement. According to this Florida appellate court, once there is a determination that there is a covered peril and a total loss, the actual cause of the total loss is not relevant.

Not surprisingly, in response to Mierzwa, the insurance industry used its substantial wealth and political influence to lobby the Florida Legislature to either repeal or amend the Valued Policy Law. The Florida legislators appeared almost human as they dangled from invisible strings attached to the skillful hands of their insurance industry puppeteers. Senate Bill 1486 was signed into law by Governor Bush on June 1, 2005.

Now, as a result of the insurance industry lobbyists' efforts, Florida's Valued Policy Law states that if a loss is caused in part by a covered peril and in part by a non-covered peril, the insurance provider's liability is limited to the amount of the loss caused by the covered peril. However, if the covered perils alone would have caused the total loss, then the Valued Policy Law applies and the insurance provider must pay policy limits, not exceeding the amounts necessary to repair, rebuild or replace the insured structure. Initially, proponents of this Bill attempted to include retroactive language that would have relieved insurance providers from liability resulting from Florida's 2004

hurricanes. Fortunately, the legislators, in a feeble attempt to demonstrate a slight degree of backbone to their homeowner-constituents, pulled the retroactive language from the Bill prior to passage.

Louisiana and Mississippi each have a Valued Policy Law similar to Florida's statute. Although neither state has interpreted the language of the statute, courts in Louisiana and Mississippi would probably concur with Florida's Mierzwa decision and determine that the meaning of the Valued Policy Law is "simple and straightforward."

Many structures damaged by Hurricane Katrina and Hurricane Rita were insured under homeowner's insurance and commercial property insurance policies, which arguably excluded storm surge as a covered peril. It was storm surge that caused the majority of damage to these structures. However, these structures also sustained damage from wind (which is a covered peril). Under Louisiana's Valued Policy Law, La. R.S. 22:695(a), an insurer must pay the full value of the loss, without deduction or offset, if a valuation was placed on the property and such valuation was used to calculate the premiums. If an insurer provided clear notice in the policy of a different method of calculating the loss, then the insurer would not be required to pay the full value of the loss. In other words, the insurer must pay the policy limits for a total loss unless a different method of computation was clearly set forth in the application and policy.

Courts in Mississippi may further find that the water damage exclusion provisions are void and unenforceable as violations of state public policy in that such exclusion provisions attempt to invalidate long-standing state law and judicial precedents governing the issue of proximate causation. Moreover, the water damage exclusion provisions attempt to immunize the insurance providers from contractual liability on insured perils, i.e., wind, which is a proximate cause or contributing cause of loss, all in contradiction of state law.

In conclusion, notwithstanding the insurance industry's ability to successfully lobby the Florida Legislature to undermine Florida's Valued Policy Law, the courts in Louisiana and Mississippi will probably concur with the Florida appellate court's well-reasoned ruling in Mierzwa. However, Louisiana and Mississippi courts may determine that the better rule is to require that a covered peril, i.e., wind, be the proximate cause of the total loss in order to trigger the Valued Policy Law. In Louisiana and Mississippi, it is undisputed that the property would not have been damaged but for the hurricane winds of Katrina and Rita.

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