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Was It Wind or Water? Gulf Coast Lawyer Is Taking On Insurers

By JEREMY ALFORD
and JOSEPH B. TREASTER

PASCAGOULA, Miss., Sept. 18 — Richard Scruggs picked his way through the ruins of his once-hand-some four-bedroom home, no more than 50 yards from the edge of the Gulf of Mexico.

A wall of water flung by Hurricane Katrina tore through the home a little more than three weeks ago, blowing out the sides of the house and leaving only a pair of brick chimneys and exposed studs tenuously holding up the upper floor.

To the left of Mr. Scruggs's home lies a bare concrete slab where another elegant home stood until the storm's assault on New Orleans and the coasts of Louisiana, Mississippi and Alabama. To the right, a peaked roof sits at a twisted angle on a waterlogged lawn, all that remains of another big house.

"The whole street is torn up," Mr. Scruggs said. "Very few houses are even standing."

Mr. Scruggs, a wealthy plaintiffs' lawyer who played a leading role in wrenching a \$250 billion settlement from the tobacco industry a few years back, is furious about the hurricane — not simply that it happened, but that insurance companies might escape what he sees as their responsibility for a huge portion of the losses from the storm, those resulting from flooding.

The insurers say homeowners' policies cover wind and rain damage, but do not cover flood damage caused by hurricanes or anything else. A federal program provides up to \$250,000 in flood insurance, but most people do not have that coverage.

"I'm not going to sit still for this," said Mr. Scruggs, who grew up in Pascagoula and has practiced law here for decades. "I'm going to bring every organizational and legal skill I possess to make these guys do the right thing under their policies."

At stake is a potential \$15 billion worth of insurance payments. That

THE SMELL OF RECOVERY

The reopening of a coffee plant in New Orleans is heralded as a sign of the city's economic revival. Page C6.

explains why the insurance companies, which have never been successfully challenged on the "wind vs. water" issue, are equally adamant.

They have contract law in their favor, they say. Their longstanding practice of not covering flood losses resulted years ago in a federal program being specifically created to provide such coverage. Still, they worry about going to court in Mississippi, which has a reputation for being tough on corporate defendants despite recent changes in the state's legal system.

At the very least, Mr. Scruggs contended that the extent of coverage is ambiguous and that courts have ruled that it is the responsibility of the writer of the policy — the insurance company — to make the provisions clear.

Much of the damage, he said, came from storm surge, which he said was gulf water driven inland by the wind. If the insurers wanted to exclude coverage for storm surge "they certainly know how to do it," he said. "And that term does not appear."

Fred Levin, a Pensacola lawyer who specializes in suing insurance companies, said his first reaction was that Mr. Scruggs had no chance of winning. "What the hell are they trying to do?" he said. "Contract law is contract law."

But Mr. Levin said policies on the Gulf Coast, unlike those in Florida, do not appear to include large, bold-type warnings that flood damage is not covered. He added that any lawsuit by Mr. Scruggs could hinge on whether insurance agents fully explained to homeowners that their hurricane coverage applied only to wind and rain.

"You go to the agent and tell him you want full coverage," Mr. Levin said, "and he tells you, 'Yes, you've got full coverage.' I think that's the best claim they've got."

There is no disputing that Hurricane Katrina caused enormous damage, much of it from flooding. Robert

P. Hartwig, the chief economist of the Insurance Information Institute, a trade group in New York, estimates that 200,000 homes were destroyed or damaged beyond repair in Louisiana, Mississippi and Alabama. Estimates of the insured losses run as high as \$60 billion, nearly twice as much in today's dollars as the losses

in the Sept. 11 attacks and nearly three times the insurers' costs from Hurricane Andrew, the worst previous storm, in 1992.

Should the Mississippi challenge go against the insurers, Mr. Hartwig said, costs could rise to more than \$75 billion. If forced to pay for damage they never anticipated and for which they never collected premiums, Mr. Hartwig said, insurers would face severe strains; some might even go bankrupt.

Most people, even in low-lying areas, do not buy federal flood insurance. But even fewer people bought flood insurance on the Mississippi Coast than in New Orleans and nearby parishes or counties. In New Orleans, Mr. Hartwig said, 40 percent bought it. Nearly 60 percent did so in the two flanking parishes. But in the three Mississippi counties facing the Gulf of Mexico, 23.4 percent bought it in Hancock County, 11.7 percent in Harrison County and 10.4 percent in Jackson County.

Jim Hood, the attorney general of Mississippi, filed a civil lawsuit in a state court last Thursday to force the insurers to pay for storm surge losses. "I'm not going to allow insurance companies to bankrupt the entire Gulf Coast by using the fine print and saying that people should have known that they didn't have coverage for water damage," he said.

Mr. Scruggs, 59, said that he and his neighbors, like thousands of owners of homes and small businesses along the coast, bought hurricane insurance for which they paid an extra premium and agreed to a higher-than-usual deductible. He said he bought the maximum of \$250,000 in federal flood insurance for his \$800,000 home because it sits on the waterfront. But he and some insurance executives said the flooding from Katrina extended much farther inland than in previous storms.

Mr. Scruggs said storm surges were part and parcel of hurricanes along the Gulf Coast. "Everyone knows, as does the insurance industry, that the major risk to life and property from a hurricane is storm surge," he said. "So having a hurricane policy that excluded storm surge is preposterous. No one believed that. When you pay an additional premium for a hurricane endorsement you would naturally

think, 'O.K., I've got that covered.'"

The insurance companies say the cost of hurricane coverage was intended to pay for extraordinary expenses resulting from hurricane winds and rain.

"The flood exclusions are very broad and cover rising waters regardless of the cause or circumstance," Mr. Hartwig said. "Homeowners' contracts are pretty cut and dry. They've been tested by time."

Mr. Scruggs said he planned to file lawsuits in a few days on behalf of several hundred Gulf Coast residents against State Farm, Allstate and Nationwide — the three largest insurers in the region — as well as others.

Jeremy Alford reported for this article from Pascagoula, Miss., and Joseph B. Treaster from New York.

Seeking to upset the insurance precedent on flood damage.

With a bank of operators responding to a toll-free number, Mr. Scruggs said his list of clients could easily run into the thousands. To make space for the anticipated jump in business, Mr. Scruggs has gutted a conference room in his office in an antebellum home on the main street of Moss Point, a village adjacent to Pascagoula, and set up rows of interview cubicles with a waiting room filled with dozens of neatly aligned metal folding chairs.

Mr. Scruggs said he did not see the insurance battle as a personal gold mine. He said he was prepared to take as little as 1 percent of any settlement or jury award — far less than the typical contingency fee of one-third or more — and that he would try to get the insurers to pay for his services separately from any payments to policyholders.

State Farm, Allstate and Nationwide declined to comment on the planned lawsuits. But all of the companies contended that any effort to force payment would be against the public interest. "In essence," said Richard Luedke, a spokesman for State Farm, "the attorney general is challenging the validity of contracts in the state of Mississippi and that threatens the foundation of the economy and state and has ramifications for the residents of Mississippi." Paul Leonard, a police lieutenant in Pascagoula, said he turned to Mr. Scruggs after surging gulf waters gutted his home a few blocks back from the waterfront and his insurer, Nationwide, denied his claim.

"They said all my damage was from water and they weren't paying," Mr. Leonard said. "If it was

from wind, they said they would have paid."

Mr. Scruggs has shifted much of his daily work to an office in Oxford, Miss., in the last year or so. Since the hurricane, he has been commuting between Oxford and Pascagoula in his private twin-engine corporate jet, sometimes ferrying generators, food, water and other relief supplies. He said he expected to be spending more time on the coast as he battles the insurance companies.

Mr. Scruggs said he has not yet learned how his insurer, USAA, plans to respond to his claim.

In any event, Mr. Scruggs, who said his taxable income last year was \$8 million to \$9 million, said that if he had to, he could certainly cover his own losses. Most other people, he said, "will have no way to rebuild or do anything."



Jim Wilson/The New York Times

Richard Scruggs, a well-known plaintiffs' lawyer, in the wreckage of his home in Pascagoula, Miss.



Jim Wilson/The New York Times

The pool at Richard Scruggs's hurricane-ravaged home was filled with debris. Mr. Scruggs plans a lawsuit on behalf of others against insurers.