

Insurance News You Can Use

what's UP

Hurricane Claim Justice in Mississippi



"Unable to prove whether wind or water destroyed their homes, many policy holders settled claims for fractions of their home values." (From the article that ran in the Jackson Free Press the day after the MS. Supreme Ct. decision in Corban)

In October, in a closely watched Katrina case, the Mississippi Supreme Court held in essence that if an insurer sells a homeowners policy labeled "all risk", it cannot apply ambiguous or contradictory exclusions to deny a claim. The full name of the case is Margaret and Magruder S. Corban vs. United Services Automobile Association (USAA).

United Policyholders participated in the case as a "friend of the court" via a brief drafted pro bono by **Merlin Law Group**. Insurers and insurer trade associations deluged the Court with amicus briefs and arguments, and in view of what the Court called the "extraordinary impact" of the resolution of the issues in the case on citizens and the insurance industry, it allowed Nationwide Insurance Company and the Mississippi Attorney General to participate in oral argument. The following is **Chip Merlin's** analysis of the

...continued on p7




2007 and 2003 wildfire survivors (L to R) Christy Williams, Renee VanHeel, Karen Reimus, Barbara Levine, Doris Okonsky

Honoring Help, Pain and Progress

UP helped mark the recent two-year anniversary of severe San Diego wildfires by completing the third in a series of data gathering surveys and by co-sponsoring "A Community of Friends, 2007 Wildfire Anniversary Commemoration" with several of our partner organizations. Well over 300 people attended the October event.


Outreach Coordinator **Karen Reimus** emceed the event and showed an outstanding video montage that she created featuring the many framing parties she's attended. Ten UP volunteers – all from our Disaster Survivor Support Network program were on hand to help out. (See photo). It was a moving event, and survivors expressed profound gratitude for the support and help they've received. San Diego City Councilwoman **Pam Slater-Price** presented UP with a Certificate of Appreciation in recognition of our outstanding contributions to the City of San Diego.

Our sincere thanks to our wonderful UP volunteers: **Bill Reimus, Barbara Levine, Jane Rabun, Mary Drummond, James Paterniti, Lisa Yates, Erik Strahn, Bob and Betsy Weibert**, and **Sandra Wetzel-Smith**, and to **Jan Rasmussen, David Shalinsky, Robin Kaufman**, and **Renee VanHeel**. 

Experts on Preparedness



Program Coordinator Emily Cabral with Firefighters at S.F. Station #10

United Policyholders is forging partnerships with firefighters and others working to help individuals and businesses be better prepared. As word spreads about UP as a non-profit with 18 years of hands-on experience in insurance matters, more entities are tapping into the valuable preparedness information we offer. Program Coordinator **Emily Cabral** was a presenter at a meeting of the **Bay Quake Alliance** in Palo Alto, CA. Executive Director **Amy Bach** was a featured speaker at a recent meeting of the **Business Recovery Managers Ass'n.** (No. Cal) and the **Santa Barbara FireSafe Council**. 

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ROADMAP TO PREPAREDNESS

UP's Roadmap to Preparedness program offers tools and resources that promote financial preparedness and loss mitigation.

Every day consumers from around the country contact United Policyholders for help solving an insurance-related problem. UP staff and volunteers include professional experts as well as people who've personally experienced the loss of a home or a disabling illness or injury. Our **Roadmap to Recovery™** program offers solutions to many of the problems that get reported to us.

Some insurance problems are easier to avoid than to solve. Over time UP has developed a **Roadmap to Preparedness** program as a pro-active way of helping people. The program uses information and ideas we've picked up during our 18 years of experience working with disaster survivors. Our preparedness program resources are based on hindsight and

lessons learned by people and public safety professionals, and pointers learned over time, such as how screens can keep wildfire embers from coming into a home...how plywood sheer panels and gas shut-off valves can minimize quake damage...and how much better people listen to preparedness messages when the messenger is telling their personal story. People who have not had a loss have much to learn from people who have.

Educating people on the importance of buying enough and the right kind of insurance to avoid being underinsured is a top priority of our Roadmap to Preparedness program. Insurers' home replacement cost formulas are often wrong, and sales reps promise more than they deliver, so many policyholders find

themselves underinsured in their time of need. Helping people solve this problem after the fact is difficult. The laws in most states protect insurance companies and agents. Judges continue to shield insurers from responsibility for misleading their customers on the extent of their protection, so the problem continues.

Changing laws takes time, so while we work toward that goal, we are tackling the underinsurance problem proactively on the front end through our Roadmap to Preparedness program. Our preparedness work strengthens our recovery work, and helps solve some of the more stubborn chronic post-disaster insurance problems we repeatedly encounter. ❧

Working with Fire Safe Councils

California has more than 150 Fire Safe Councils in communities throughout the state working to reduce the risk of wildfires. Brush clearance and encouraging preparedness are primary objectives of Fire Safe Councils. Council members include residents, businesses and government representatives. In September, **Amy Bach** was the featured speaker at a **Santa Barbara County Fire Safe Council** meeting where she presented "Insurance Assurance: Does Your Safety Net Have Holes?" and answered questions from firefighters and civic association representatives. UP staffer **Karen Reimus** sits on the **Scripps Ranch Fire Safe Council**, where many still refer to her as "the goat lady", thanks to her successful coordination of herds of goats to clear brush areas in her community. ❧

Buy Your Safety Supplies at 10% Off and Support UP

Essential supplies for making your home and work place emergency-ready can be purchased at 10% off from United Policyholders' newest preparedness partner, **Your Safety Place**. And, not only will you get the discount, but **Your Safety Place** will donate 10% of your purchase to support our work.

Their inventory of safety and emergency supplies includes 3, 7 and 14 day food kits, water storage devices, generators, and a wide range of products. Visit www.yoursafetyplace.com today and enter **promotional code UP10** at checkout. UP thanks YSP President and co-founder **Brian Klosterman** for this special deal for the friends and supporters of our organization. ❧



Barrels for storing potable water to use after an earthquake or hurricane

What To Look For When Buying Health Insurance

In today's environment we are bombarded with news about health insurance reform. Regardless of what changes the reform efforts in Washington may ultimately bring, many of us are making insurance purchasing decisions right now, and need guidance.

UP has spent nearly two decades helping policyholders with insurance problems, and we have developed remarkable expertise on the features that truly matter in an insurance plan. The following are some of the most important questions to consider when deciding to purchase new insurance or modify your existing plan:

How much will my premium go up each year?

If you are covered by an HMO (Health Maintenance Organization), you can expect your premium to increase every year by 15-20%. If your employer is paying for your insurance, you can expect these increases to be passed on to you in some form, whether it is a reduction in coverage, an increase in deductibles (the amount you have to pay) or an increase in co-pays. Regardless of what you may hear in news reports, the cost to you and/or your employer for your health care is increasing at a much higher rate than inflation.

If I switch plans, will my dependents

continue to be covered?

Read the fine print. Many employers are eliminating coverage for spouses and dependents, and others are raising your portion of the premiums. Your employer may conduct an audit to make sure that only eligible dependents are covered by your health insurance. Remember, most policies will only cover your children until age 19 unless they are in school, and then coverage may extend to age 24.

Will I have the same number of choices if I switch plans?

You may not. If you work for a large
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ROADMAP TO RECOVERY™

Our Roadmap to Recovery program offers tools and resources for solving insurance problems that arise after an accident, loss, illness or other adverse event.

S.D. Foundation Funds Wildfire Data Gathering

We are currently tallying up the results of the third in a series of surveys in the San Diego area that will give us more data on catastrophe claims and the pace of insurance settlements and recoveries. Six months, twelve months and two years after a series of 2007 wildfires destroyed and damaged dwellings in suburban and rural parts of the county, United Policyholders launched the surveys and enlisted help from several partner organizations to get the broadest possible response.

At the 12 month mark, 54% of people surveyed still had not settled the dwelling portion of their insurance claim and 44% still had not settled the contents portion of their claims. Between 70-75% of all respondents said they were underinsured by substantial sums.

We were able to get widespread coverage in the media of our findings and our data was used in a Community Needs Assessment Report published by the **San Diego Foundation, After the Fires Fund**. Much of the work UP has done in the San Diego area since the 2007 wildfires, including our series of surveys, has been funded by two successive grants from the **Fire Relief Biotech Recovery Fund** and the **After-The-Fires Fund 2007** of the **San Diego Regional Disaster Fund**, a supporting organization of the **San Diego Foundation**.

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Hundreds of fire families participated in UP surveys.

INTRODUCING: "Well Adjusted"

"Well Adjusted" is a new section we'll be featuring in future issues of What's UP. This section will contain interviews, news and information about the nuts and bolts of insurance claims. The first **Well Adjusted** column ran in our last online newsletter and contained an interview about fire damage claims with Sacramento, CA, public adjuster **Rich Csaposs** (Silver sponsor). You'll find it in the Oct. 2009 issue of What's UP in the Newsletters section at www.uphelp.org



Charles "Dick" Tutwiler, shown adjusting a commercial loss in Florida, will be interviewed about wind damage and building code upgrades in a future issue.

Expert Financial Advice on Timely Topics

Santa Barbara, CA

People around the country whose homes get severely damaged or destroyed face a common challenge: *Does it make more sense to replace the home by rebuilding or by buying elsewhere?* There are many personal and financial factors to consider.

UP offers a "Rebuild or Buy" publication to help people make the right decision, and we continue to get inquiries about a free program we organized in Santa Barbara last July. The program was co-sponsored by the **Santa Barbara County Office of Emergency Services** and the **Mission Canyon Association** for property owners impacted by the winter 2008 Tea Fire and the spring 2009 Jesusita Fire. The presenters explained factors to consider when deciding whether to replace a destroyed home by rebuilding or buying elsewhere. The speakers included **Tony Cignarale** (Deputy Commissioner at the CA Department of Insurance), **John Tripani** (a CPA specializing in the tax aspects of casualty losses), **Katherine Silsbury** (a Senior Financial Advisor and Chartered Retirement Planning Counselor in Santa Barbara) and **Amy Bach**, policyholder advocate/insurance lawyer/UP Executive Director.

UP's help is especially crucial around the first anniversary of a damaging event. Deadlines for filing suit and/or submitting documentation are often set at the one year mark. In our Claim Tips library we offer help on getting extensions and avoiding any adverse consequences at the one year anniversary. <http://www.uphelp.org/pdfs/ProtectingLegalRights.pdf>

Orange County, CA

Attorney **Randy Curry** was the featured speaker at a recent Roadmap to Recovery program in Orange County, CA, where over one hundred homes burned down in late 2008. His topic was **"Pre-One Year Anniversary Legal Issues... Things to think about before November 15th arrives."** Our work in Orange County continues under the leadership of **Karen Reimus** who has coordinated a series of high quality speakers with UP's Northern California team and has provided individual and group support to many grateful families in the area. 

In Memoriam

As 2009 draws to a close, we honor three individuals in the UP family who passed away this year: **Claire Liska** was a long time supporter of United Policyholders. She made a generous bequest to UP in her will for which we are deeply grateful. 2003 Cedar Fire survivor **Dean Luvisa** was a trained volunteer with our Disaster Survivor Support Network, as was **Rock Armstrong**. Rock worked closely with AAA insureds who burned down in 2007. We are so thankful for the contributions Ms. Liska, Mr. Luvisa and Mr. Armstrong made to United Policyholders.

ADVOCACY AND ACTION

Our Advocacy and Action program helps strengthen and protect laws to keep insurance companies' profit incentives in balance with their customers' (policyholders) rights. It includes our Amicus Project and the work we do educating the public, the media and decision makers in government and industry.

Everything You Always Wanted To Know About Disability Offsets

The following is an excerpt from a new UP tip sheet about disability offsets, written by policyholder attorney/UP sponsor **Glenn Kantor**. It builds upon the "Outrage of Offsets" article from our Summer 2009 newsletter (http://uphelp.org/pdfs/WhatsUP_Summer09.pdf)

Q: What are offsets?

A: Offsets are provisions in your disability coverage that allow your insurer to deduct from your regular benefit other types of income you receive or are eligible to receive from other sources due to your disability. Common types of offsets include, but are not limited to: Social Security disability benefits, worker's compensation benefits, and benefits from state disability programs like those offered in California, New York, New Jersey, Rhode Island, and Hawaii. Other common offsets include employer provided disability retirement benefits, and in some cases, income received from a third party who may have caused the injury that resulted in your disability.

Q: Where can I find offset wording in my disability policy?

A: Usually the section of the policy (sometimes the policy will be labeled as either a "Long Term Disability Plan" or a "Summary Plan Description") that explains your benefit amount will have language indicating that the insurer is allowed to deduct "other benefits" or "other income benefits." The policy will then have a separate section shortly thereafter explaining what types of benefits constitute "other benefits," and how the insurer will offset them from your regular benefit.

Q: I got my disability policy through my employer but I don't have my master policy--just an explanation of benefits. Is that enough to tell me what offsets are in my policy?

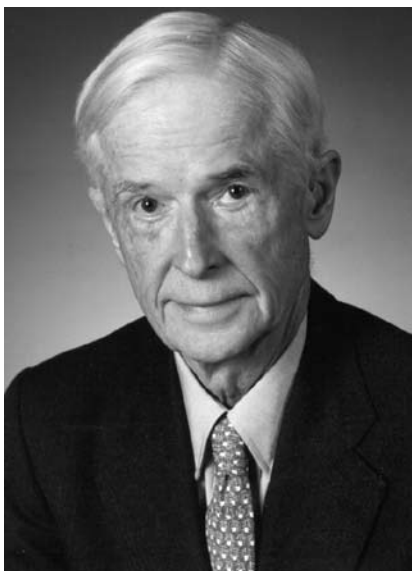
A: Probably. A federal law called the Employee Retirement Income Security Act, or "ERISA," governs employee benefits, including disability benefits. This law has extensive rules and regulations about what employers must do when they offer benefits to their employees, and



Attorneys Arnie Levinson, (CA Platinum Sponsor) and Glenn Kantor (CA Platinum Sponsor) with Amy Bach

how benefit claims should be treated. ERISA requires employers to give to their employees a "Summary Plan Description" which explains, in plain language that can be understood by the average plan participant, what the participant's rights and obligations are under the plan. This Summary Plan Description should include provisions regarding what kinds of offsets the insurance company is allowed to apply. If your Summary Plan Description does not include this information, you are still entitled to it, and you should ask your employer for it in writing.

To read the complete tip sheet by Glenn Kantor, visit the Disability Insurance section of our Claim Tips library. http://www.uphelp.org/claimtips/tip_disability.html. ☒



Gene Anderson of Anderson, Kill and Olick, generous long time supporters of the Amicus Project

Legal Advocacy News

Since our last issue, UP went to bat in court for individual and business policyholders in New York, California, Florida, Mississippi and Ohio. In **New York** we continued our work promoting full legal protection for policyholders who fall victim to unfair insurance practices, and in **California** we advocated for arbitrator neutrality standards and for enforcement of a regulation requiring insurers to give clear notice to consumers about pending legal deadlines. In **Florida** we weighed in on an important legal issue that impacts all policyholders in the Sunshine State. A big win for "all-risk" policyholders was just handed down in **Mississippi**, in a Katrina-related case (Corban vs. USAA.) Visit <http://tinyurl.com/Oct09Amicusupdate> to read summaries of the most recent briefs that UP has filed this year. ☒

Support UP's Amicus Project

The number of briefs that insurance companies file to convince courts to see things their way far outnumber pro-policyholder briefs. The voices of insurance companies often drown out the voices of consumers. UP works to change this through our Amicus Project.

Help us level the playing field for consumers in court by supporting UP's Amicus Project today. Tax-deductible donations can be made online at <http://tinyurl.com/donateUP> or by check in the enclosed return envelope.

UP NEWS

135 Volunteers and Counting: UP Disaster Survivor Support Program Expands



Pictured left to right: DSSN team members Jane Rabun, Mary Drummond, Sandi Wetzl-Smith, Karen Reimus, Lisa Yates

The official title of UP's Disaster Recovery Mentor program is now the **Disaster Survivor Support Network (DSSN)**. **Karen Reimus** developed and runs this important program for recent catastrophic loss victims that builds on UP's Ambassador program and other efforts over the years to connect people who've "been there" with people who "are there". We're enormously proud of our 135 volunteers, and we are working to raise awareness of the invaluable support they can offer to an individual or family in need. **Reimus** and staffer **Torrey Rodgers** recently distributed updated training/reference manuals to each of our wonderful DSSN volunteers. 🏠

Wildfire Data Gathering . . . continued from p3

Homeowners politicians assume that damaged or destroyed property will be replaced in under a year from the date of a loss. Policies are full of 12 month deadlines relating to temporary rent, collecting full replacement values, lawsuits and more. But the truth is, it often takes two years or longer, including time spent negotiating with insurance adjusters, contractors and/or realtors, to get back home.

UP offers many resources to help people avoid delays in rebuilding and/or replacing a damaged or destroyed home, and we've worked for years to pass laws that recognize that the process takes longer than one year. Our survey results are helping us pinpoint problem areas where further work is needed. 🏠

Bach Talk

As 2009 draws to a close, our organization again has much to be thankful for. The photos of rebuilding/framing parties this past year, and the many "thank you's" we've received are proof that our work is translating into better insurance settlements for real people. How's this for a gratifying email? "Please add my name to the list of UP volunteers. I have told you many times that you, [**Karen Reimus**] and UP have been an answered prayer for me and my family." *M.C., a 2007 San Diego area wildfire survivor who regularly attended Roadmap to Recovery meetings.*

The fruits of our Advocacy and Action and Preparedness work are not as visible or quantifiable as our work with disaster survivors, but just as important. We recently helped convince **U.S. Senator Barbara Boxer** to co-sponsor **S. 886**, a bill introduced by **Senator Feinstein**. The bill is designed to cut the cost of earthquake insurance for Californians in half and reduce rates in hurricane-prone states with coastal exposures that have been experiencing insurance affordability crises in recent years.

I'm so proud of our growing staff and the enhanced resources we are offering the public: We now have **135** trained volunteers participating in the **UP Disaster Survivor Support Network**. We're expanding our online educational videos for those who learn better by listening. We've added state-specific help tips and gained professional sponsors in many new states. This is enhancing our ability to help the growing number of consumers that are emailing and calling us every day from across the U.S. for help solving specific and often technical problems. From just one geographical area in Southern California alone there were 27,000 visits to our "Ask an Expert" Q and A forum.

One of the many firms that drafts top quality amicus briefs for us is featured in this



Adam Cole, General Counsel at the CA DOI and Exec. Dir. Amy Bach

month's Volunteer Spotlight. They, along with **Anderson, Kill & Olick, Kim Card, Sharon Arkin, Mark Debofsky, Merlin Law Group, James Sturdevant, Lee Epstein**, and others thanked in prior issues of our newsletters helped us score important amicus/legal victories this year.

And coverage of our work in the **New York Times**, the **Los Angeles Times**, the **Oakland Tribune**, the **Mississippi Sun-Herald** as well as **ABC** and **CBS TV** is helping raise awareness that our website is a must-visit for anyone with insurance questions.

On a political note, how fascinating it is that a repeal of insurers' antitrust exemption is finally on the table in Washington. Insurers' spending and intense lobbying against health care reform provoked lawmakers to finally pay serious attention to this long overdue change.

At year's end, I am inspired by and grateful for the generosity of our individual donors, our sponsors and the progress we have made in earning the respect of public officials, industry leaders and funders who recognize why our work is so needed and so worthy of financial support. 🏠

VOLUNTEER SPOTLIGHT: Dickstein Shapiro LLP



Stephen Goldberg authored UP's recent brief in Merrick v. Unum.

Dickstein Shapiro LLP is a national law firm that has stepped up their pro bono work for UP in recent years, drafting amicus briefs in three recent cases involving important principles including the scope of the "genuine issue" defense and the deterrent function of punitive damages. We thank attorneys **Kirk Pasich, Cassandra Franklin, Stephen Goldberg** (pictured left) and **Idan Ivri** for applying their expertise in insurance matters to advance the interests of United Policyholders' constituency.

UP Hosts Policyholder Attorney Networking Party

Policyholder attorneys and UP sponsors gathered at a networking party in San Francisco during the summer convention of the American Association for Justice in July. Guests enjoyed cocktails with colleagues at a historic speakeasy. 🍸



Bonny Rafel (NJ) and Chip Merlin (FL, Platinum Sponsor)



Jilda and Bill Shernoff, (CA, UP Board member and Platinum Sponsor), Bach



Bach with attorney and professor Jerry Ramsey (CA, Gold Sponsor)



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Amy Bach with UP Board member Gerry Mannion, (CA Platinum Level Sponsor)



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Cy Pres donor and S.F. consumer class action attorney Arthur Levy with grateful Amy Bach



Chip and Kim Merlin (FL, Platinum Sponsor)

Save a Tree—Online UP

To sign up for UP's quarterly electronic newsletter and Tips of the Month, please email emily@uphelp.org and write "Subscribe Online" in the subject line. Or call the UP office at 415.393.9990. Make sure to add amy@uphelp.org to your "safe senders" list so these communications don't get lost in your SPAM filter!

NOTE: United Policyholders respects and protects the privacy of those who communicate with and/or support our organization. We do not sell or share our membership or mailing lists.

Help Us Help You

We're working hard to make sure your insurance company keeps its promises. Please support our unique and important work by making a tax-deductible contribution today. You can donate via credit card by going to <http://tinyurl.com/donateUP>, or by mailing a check in the enclosed envelope.

THANKS TO OUR SPONSORS

Our sponsorship program helps consumers find local professional help, supplements the donations and grant funding that allow us to get our work done, and helps qualified experts get exposure to potential clients. Claim and legal professionals, as well as vendors of disaster recovery products and services, may apply to become a UP sponsor. An application and sponsorship criteria are available upon request from Emily Cabral. Telephone inquiries: 415.393.9990, email info@uphelp.org, fax: (415) 677-4170.

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Health Insurance...continued from p2

employer, and you are used to having a wide choice of health insurers, you are going to find that national carriers are replacing many local plans, and that your choices are very limited. If you have an individual plan you may find that fewer insurers are offering them, or that the cost to keep what you have is just too high.

Will I save money with a high deductible plan?

Not necessarily. In the Fall 2007 issue of the UP newsletter (see <http://uphelp.org/newsletters/fall07.html>), we detailed the scam of high deductible insurance policies. Generally speaking, these plans are cheaper, and as long as you are healthy and can afford the deductible, that's a good thing. But keep in mind that a quick visit to the emergency room for an unexpected

injury or sudden illness can cost you thousand of dollars, dollars that you will have to pay out of pocket until you fulfill your deductible.

Some of those dollars may come from your health insurance savings plan, but it is far more likely that your savings plan won't equal your deductible, and you will have to make up the difference. Also, if other family members are covered by a similar plan, they will likely have individual and separate deductibles.

What is a lifetime cap?

Many policies have a yearly or a lifetime cap on the expenditures you can make. A lifetime cap of \$1,000,000 may look like a lot when you are healthy, but it could leave you with thousands of dollars of medical bills if you or a member of your family has a sudden, serious health issue. ❌

Katrina Win...continued from p1

decision from his Property Insurance Coverage Law blog (<http://www.propertyinsurancecoveragelaw.com>). Chip's blog is a "must-read" for anyone with an interest in adjusting or legal issues related to property damage:

"My initial impression is that this is a **huge win for policyholders because the decision correctly defines the burdens of proof in an all-risk insurance situation.** The Court correctly noted what I have been advocating regarding the burden of proof since the date I first landed at Stennis Airport outside Waveland a week after Hurricane Katrina:

With respect to the "all-risk" coverage of "Coverage A - Dwelling" and "Coverage B - Other Structures," **the Corbans are required to prove a "direct, physical loss to property described."** Thereafter, **USAA assumes the burden to prove, by a preponderance of the evidence, that the causes of the losses are excluded by the policy,** in this case, "[flood] damage." USAA is obliged to indemnify the Corbans for all losses under "Coverage A - Dwelling" and "Coverage B - Other Structures" which USAA cannot establish, by a preponderance of the evidence, to have been caused or concurrently contributed to by "[flood] damage." "Contributed to" comes into play only when "[flood] damage" is a cause or event contributing concurrently to the loss. Pursuant to the policy language, only if proof of a "concurrent" cause is presented to a jury for consideration would the jury receive an instruction including the policy phrase "contributing concurrently".

This ruling confirms State Farm's Wind/Water Protocol is the wrong test under Mississippi law because it improperly shifted the burden upon the policyholder to prove that the wind caused the damage rather than the insurer having to prove that the damage was excluded.

Corban undermines the Fifth Circuit reversal of Judge Senter in Broussard vs. State Farm, and as I suggested in Broussard's Bad Faith Decision Impaired by the Mississippi Supreme Court, there is one important mistake the Court did make in its decision when it held: "With respect to the "named perils" coverage of "Coverage C-Personal Property," the Corbans are required to prove, by a preponderance of the evidence, that the "direct physical loss" to the property described in Coverage C was caused by wind." There is no named peril of "wind." Policies have always required the policyholder to prove damage by the named peril of "windstorm." In insurance lore and law, there is a big distinction. The most significant for Katrina victims is that a hurricane is a windstorm." The policyholder can easily prove that." ❌



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