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Mississippi Court Rules Home Insurance Policy Covers Hurricane Wind Damage

In a 9-0 decision, the Mississippi Supreme Court has ruled that so-called "all-risk" home insurance policies may cover wind damage from hurricanes, even in situations where the loss is later exacerbated by water from storm surge.

The state high court [decision](#) found that language in a policy may exclude storm damage when it is caused by a combination of wind and water acting together. But if wind and water damage can be distinguished, this exclusion does not apply. The court said a jury must decide whether the damage to the home of Margaret and Magruder Corban was caused by wind or water.

The ruling is a blow to some insurers that had argued that such damage is excluded by anti-concurrent cause (ACC) and other language in their policies. The 5th U.S. Circuit Court of Appeals had sided with insurers in previous cases.

The state's high court has now decided that the ACC clause is not applicable because the wind and water losses were separate or in sequence, and not "indivisible." Justice Michael K. Randolph wrote for the unanimous court:

"We conclude that the ACC clause has no application for losses caused by wind peril. An insurer may not abrogate its duty to indemnify for such loss by the occurrence of a subsequent, excluded cause or event."

Once the wind loss occurred, the homeowners were entitled to coverage under the policy, the Mississippi court said.

"No reasonable person can seriously dispute that if a loss occurs, caused by either a covered peril (wind) or an excluded peril (water), that particular loss is not changed by any subsequent cause or event. Nor can the loss be excluded after it has been suffered, as the right to be indemnified for a loss caused by a covered peril attaches at that point in time when the insured suffers deprivation of, physical damage to, or destruction of the property insured. An insurer cannot avoid its obligation to indemnify the insured based upon an event which occurs subsequent to the covered loss. The insured's right to be indemnified for a covered loss vests at time of loss," the opinion states.

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The Mississippi Supreme Court opinion is significant because it preempts federal rulings since insurance contracts are governed by state, not federal, law.

The state court said that the federal circuit court did not err in ruling that storm surge is included in the water damage exclusion but did err in holding that the ACC clause is applicable.

The court sent the Corbans' case back to Harrison County Circuit Court for a jury trial.

The Corbans had sued their insurer, United Services Automobile Association, after Hurricane Katrina.

USAA downplayed the significance of the ruling. Paul Berry, USAA spokesman, told *Insurance Journal* that his company is actually pleased with the decision and believes it affirms both that USAA's "approach to handling claims in Mississippi is correct" and "decades of insurance law" including that storm surge is not covered. He said USAA has always paid wind damage.

While USAA sees no need to change its own policies and operations as a result of the ruling, other carriers in the insurance industry could be affected differently. Other parties, including Nationwide Insurance, were permitted to participate in the case because the court thought it was far-reaching.

One industry group, the American Insurance Association (AIA), said the decision provides guidance to insurers while affirming that the water damage exclusion and ACC clause are "valid provisions" that will continue to be important to insurers in adjusting wind versus water claims.

"First, and most importantly, the Corban decision reaffirms the longstanding flood exclusion provision found in most homeowners' insurance policies, that expressly excludes coverage for hurricane driven water (or storm surge)," said James Whittle, AIA assistant general counsel. "The water damage or flood exclusion has now withstood every post-Katrina court challenge, and remains a part of regulator-approved insurance contracts throughout the country."

But Smith, Phillips, Mitchell, Scott & Nowak, the Batesville, Mississippi, law firm for the Corbans, hailed the decision as a landmark, stressing that it places the burden for excluding coverage on the industry.

"Today's opinion says homeowners 'all risk' policies mean exactly what policyholders across the Gulf Coast, as well as legal scholars across the country, have said from day one: (1) Concurrent means concurrent, i.e. at the same time, and (2) In 'all risk' policies like those sold today, it is the insurance company's burden to prove what part of the loss was caused by an excluded peril (water in the case of a hurricane). The ACC clause does not relieve an insurance company of its obligation to establish causation if it seeks to exclude coverage for part of the loss caused by water," the firm said on its Web site.

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The law firm also called the Corban victory "bittersweet" because, it said, "thousands of Gulf Coast residents whose homes were destroyed by Katrina have been forced by economic circumstances to settle their insurance claims over the past four years under an erroneous interpretation of the law."

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