

Taken from Nationwide homeowners insurance policy, *Paul Leonard and Julie Leonard v. Nationwide Mutual Insurance Company*, Civil Action No.1:05 CV475 LTS-RHW, U.S. District Court, S.D. Miss., Judge Senter's Memorandum Opinion, August 15, 2006

Section 1, Property Coverages
Coverage A-Dwelling
Coverage B- Other Structures
Coverage C- Personal Property

Property Exclusions, Section 1

1. We do not cover loss to any property resulting directly or indirectly from any of the following. Such a loss is excluded even if another peril or event contributed concurrently or in any sequence to cause the loss.

b) Water or damage caused by water-borne material. Loss resulting from water or water-borne material damage described below is not covered even if other perils contributed, directly or indirectly to cause the loss.
Water and water-borne material damage means:

(1) flood, surface water, waves, tidal waves, overflow of a body of water, spray from these, whether or not driven by wind.

n) Windstorm or hail to any

(1) structure, other than a building, including the supports and screens, with a roof-like covering of cloth, metal, plastic or fiberglass, whether or not the structure is attached to a building.

(2) screens, including their supports, around a pool, patio or other areas.

(3) property lines and similar walls, including seawalls, greenhouses, hothouses, slathouses, trellis, pergolas, cabanas and outdoor equipment used to service the residence premises.

(4) structure, including property in or on the structure, which is in whole or part, in or over water.

2. We do not cover loss to any property resulting directly or indirectly from the following if another excluded peril contributes to the loss:

c) Weather conditions, if contributing in any way with an exclusion listed in paragraph 1 of this Section.

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EXHIBIT B

Taken from State Farm homeowners policy, *John Tuepker and Claire Tuepker v. State Farm Fire & Casualty Company*, Civil Action No. 1:05CV559 LTS-JMR, Judge Senter's Memorandum Opinion, May 24, 2006

Section I, Losses Insured
Coverage A–Dwelling
Coverage B–Personal Property

Section I –Losses Not Insured

1. We do not insure for any loss to the property described in Coverage A which consists of, or is directly and immediately caused by, one or more of the perils listed in items a. through n. below, regardless of whether the loss occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these:

a. collapse, except as specifically provided in Section I Additional Coverages, Collapse.

2. We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following events. We do not insure for such loss regardless of: a) the cause of the excluded event; or b) other causes of the excluded event; or c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these:

c. Water Damage, meaning:

(1) flood, surface water, waves, tidal water, tsunami, seiche, overflow of a body of water; or spray from any of these, all whether driven by wind or not;

3. We do not insure under any coverage for any loss consisting of one or more of the items listed below. Further, we do not insure for loss described in paragraphs 1 and 2. immediately above regardless of whether one or more of the following: a) directly or indirectly cause, contribute to or aggravate the loss; or b) occur before, at the same time, or after the loss or any other cause of the loss:

c. weather conditions.

However, we do insure for any resulting loss from items a., b., and c. unless the resulting loss is itself a Loss Not Insured by this Section.

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EXHIBIT C

State Farm Insurance Companies



September 28, 2005

STATE FARM INSURANCE COMPANIES
1900 E. Park Road
Golfport, MS 39607
Tel. (228) 804-4626

Pamela and Thomas McIntosh
2558 S Shore Dr
Biloxi, MS 39532-3010

RE: Claim Number: 24-Z178-802
Policy Number: 24-BX-4847-7
Date of Loss: August 29, 2005

Dear Mr. and Mrs. McIntosh:

This follows our visit to your property when we discussed the damage to your residence.

The damage to your property may have been caused by wind and water. We are continuing to investigate that portion of your loss caused by wind.

Enclosed please find an estimate for that damage and a draft in payment for that portion of your loss clearly caused by wind in the amount of \$36,228.37

Based on the site visit and other facts, our investigation showed that some of your property was damaged as a result of storm surge, wave wash and flood. Unfortunately, that damage to your property is not covered under the policy identified above.

Please see the following relevant policy language.

Section I - Losses not insured

2. We do not insure any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these:
 - a. Ordinance or Law, meaning enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure.
 - b. Earth Movement, meaning the sinking, rising, shifting, expanding or contracting of earth, all whether combined with water or not. Earth movement includes but is not limited to earthquake, landslide, mudflow, mudslide, sinkhole, subsidence, erosion

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EXHIBIT D

or movement resulting from improper compaction, site selection or any other external forces. Earth movement also includes volcanic explosion or lava flow, except as specifically provided in SECTION I - ADDITIONAL COVERAGES, volcanic action.

c. Water Damage, meaning:

- (1) flood, surface water, waves, tidal water, tsunami, seiche, overflow of a body of water, or spray from any of these, all whether driven by wind or not;
- (2) water from outside the plumbing system that enters through sewers or drains, or water which enters into and overflows from within a sump pump, sump pump well or any other system designed to remove subsurface water which is drained from the foundation area; or
- (3) natural water below the surface of the ground, including water which exerts pressure on, or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure.

However, we do insure for any direct loss by fire, explosion or theft resulting from water damage, provided the resulting loss is itself a Loss Insured.

State Farm Insurance does not intend to waive any policy defenses, in addition to those quoted above and reserves its right to assert additional policy defenses at any time.

If you have additional information you would like us to consider that you have not previously submitted, or if you desire any explanation of this letter, please contact me.

Sincerely,

Claim Representative

Date: September 13, 2005
To: State Farm Claim Associates handling CAT PL in the Central and Southern Zones
From: Property and Casualty Claim Consulting Services
Subject: Wind/Water Claim Handling Protocol

.....ACTION REQUIRED.....

Summary
Because of the combination of wind and water damages many homes sustained from Hurricane Katrina, the following materials have been developed and are intended for use as a guide for handling various wind and/or water claims in Louisiana, Mississippi and Alabama.

Action
The protocol below outlines the process that should be used for determination of coverage in these locations.

Protocol Detail
Each claim should be handled on its merits. A causation investigation should be conducted and appropriate claim file documentation is required. Any available information should be considered in making a coverage determination. This information will include, but is not limited to:

- Evidence gathered at the on site inspection. This includes documentation of physical evidence such as water lines, an examination of the debris, and an analysis of the physical damage to the structure.
- Evidence gathered at neighboring locations.
- Data obtained from reports describing damage to the area.
- Information from witnesses and policyholders.
- Input from experts that may be retained to provide guidance.

The damage to insured properties will fall into the following categories and should be handled as detailed below:

- Damage to the property was caused by windstorm.
- Damage to separate portions of the property can be attributed to either windstorm or excluded water.
- Damage to the property was caused by excluded water, with no available coverage.
- Damage to the property was caused by flood waters; covered by an available flood policy.

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EXHIBIT E

Damage Caused by Windstorm

When the investigation indicates that the damage was caused by windstorm, the claim will be handled under the applicable provisions of the involved property policy. Consideration should be given to determine if a hurricane deductible or a windstorm or hail exclusion endorsement is involved and the claim handled accordingly.

Damage to Separate Portions with Distinguishable Wind or Excluded Water

Each type of damage should be documented in the claim file. The claim representative should calculate the separate damage attributable to each part and handle the adjustment accordingly. In those cases where the policyholder has policies for both a windstorm and a flood, payments should be issued under the applicable policy.

Damage Caused by Excluded Water

When the investigation indicates that the damage was caused by excluded water and the claim investigation does not reveal independent windstorm damage to separate portions of the property, there is no coverage available under the homeowners policy pursuant to the following language in Section 7 Losses Not Insured:

"2. We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result to any combination of these:

a. Water Damage, meaning:

- (1) flood, surface water, waves, tidal water, tsunami, seiche, overflow of a body of water, or spray from any of these, all whether driven by wind or not . . ."

Other Losses Not Insured may be applicable, including 2.c.(2) & (3), 6.(a), (b) & (c).

Damage to Property Caused by Flood Waters with available Flood Policy

Where wind acts concurrently with flooding to cause damage to the insured property, coverage for the loss exists only under flood coverage, if available. The flood damage claim should be handled consistent with the terms of the flood policy providing coverage as outlined in Operation Guide 71-00.

Claims Where the Causation Investigation is Pending

Payment can be made under a reservation of rights for ALE or Loss of Income under the property policy until the final coverage decision is made. The policyholder should be advised in writing that:

- The investigation is ongoing.
- No coverage decision has been made.
- In the event it is determined that there is no covered damage, no further payment will be made on ALE or Loss of Income.
- They may undertake an independent investigation.

All claims in this category must be reviewed by the Claim Team Manager before a final decision is made. Management should be involved in any claim where it is deemed necessary to retain an expert to assist in the determination of causation.

For More Information
Any question on this protocol should be directed to your Claim Team Manager.

- C. P & C Claims Executive**
- Southern Zone Executive & Claim Managers**
- Central Zone Executive & Claim Managers**
- P & C Claims Directors and Consultants**
- Catastrophe Services Claim Managers**
- Catastrophe Services Section & Team Managers**
- Zone Section Managers**

Transcript of Exhibit E

Date: September 13, 2005
To: State Farm Claim Associates handling CAT FL in the Central and Southern Zones
From: Property and Casualty Claim Consulting Services
Subject: Wind/Water Claim Handling Protocol

Action Required

Summary

Because of the combination of wind and water damages many homes sustained from Hurricane Katrina, the following materials have been developed and are intended for use as a guide for handling various wind and/or water claims in Louisiana, Mississippi and Alabama.

Action

The protocol below outlines the process that should be used for determination of coverage in those locations.

Protocol Detail

Each claim should be handled on its merits. A causation investigation should be conducted and appropriate claim file documentation is required. Any available information should be considered in making a coverage determination. This information will include, but is not limited to:

- Evidence gathered at the on site inspection. This includes documentation of physical evidence such as water lines, an examination of the debris, and an analysis of the physical damage to the structure.
- Evidence gathered at neighboring locations.
- Information from witnesses and policyholders.
- Input from experts that may be retained to provide guidance.

The damage to insured properties will fall into the following categories and should be handled as detailed below:

- Damage to the property was caused by windstorm.
- Damage to separate portions of the property can be attributed to either windstorm or excluded water.
- Damage to the property was caused by excluded water; with no available coverage.
- Damage to the property was caused by flood waters; covered by an available flood policy.

Damage Caused by Windstorm

When the investigation indicates that the damage was caused by windstorm, the claim will be handled under the applicable provisions of the involved property policy. Consideration should be given to determine if a hurricane deductible or a windstorm hail exclusion endorsement is involved

and the claim handled accordingly.

Damage to Separate Portions with Distinguishable Wind and Excluded Water

Each type of damage should be documented in the claim file. The claim representative should calculate the separate damage attributable to each peril and handle the adjustment accordingly. In those cases where the policyholder has policies for both a windstorm and a flood, payments should be issued under the applicable policy.

Damage Caused by Excluded Water

When the investigation indicates that the damage was caused by excluded water and the claim investigation does not reveal independent windstorm damage to separate portions of the property, there is no coverage available under the homeowners policy pursuant to the following language in Section 1 Losses Not Insured:

“2. We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or © whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result to any combination of these:

c. Water Damage, meaning:

(1) flood, surface water, waves, tidal water, tsunami, selche, overflow of a body of water, or spray from any of these, all whether driven by wind or not...”

Other Losses Not Insured may be applicable, including 2.c.(2) & (3), 3.(a), (b) & ©.

Damage to Property Caused by Flood Waters with available Flood Policy

Where wind acts concurrently with flooding to cause damage to the insured property, coverage for the loss exists only under flood coverage, if available. The flood damage claim should be handled consistent with the terms of the flood policy providing coverage as outlined in Operation Guide 71-06.

Claims where the causation investigation is ongoing

Payment can be made under a reservation of rights for ALE or Loss of income under the property policy until the final coverage decision is made. The policyholder should be advised in writing that:

- The investigation is ongoing.
- No coverage decision has been made.
- In the event it is determined that there is no covered damage, no further payment will be made on ALE or Loss of Income.
- They may undertake an independent investigation.

All claims in this category must be reviewed by the Claim Team Manager before a final decision is made. Management should be involved in any claim where it is deemed necessary to retain an expert to assist in the determination of causation.

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