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SPECIAL REPORT: PREPARING FOR THE STORM

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and Jeanne lashed the state and caused billions of dollars in damage. The issue is also pivotal in post-Katrina Louisiana and Mississippi courts.

But the trajectory of the cases was altered significantly by a Florida Supreme Court decision last September in *Florida Farm Bureau Casualty Insurance Co. v. Eugene A. Cox and Debra Cox*.

In the underlying case, the Coxes demanded full payment of a \$65,000 homeowner policy after Hurricane Ivan's high winds and storm surge destroyed their home. But the policy did not cover losses from the flooding, which seemed to cause most of the damage. The 1st District Court of Appeal interpreted the state Valued Policy Law to mean insurers must pay full policy limits even if an uncovered peril did most of the damage.

The justices unanimously reversed the 1st DCA and ruled insurers are liable only for covered perils even if a home is destroyed. In the Coxes' case, that means Florida Farm Bureau only has to pay for the amount of damage attributed to winds.

The decision killed a proposed class action lawsuit filed on behalf of several hundred litigants against Citizens Property Insurance, according to Fort Lauderdale plaintiff attorney Stuart Michelson. He said he has about 15 pending cases by litigants who claim they

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deserve more money for windstorm damage than insurers paid.

The high court's decision brought the interpretation of the Valued Policy Law in line with a 2005 legislative change. The law was amended after the first appellate court decision to make clear insurers are not responsible for non-covered perils and set a formula for determining the amounts owed.

The 2005 amendment and the Cox decision are "similar inasmuch as they don't favor the insured," Michelson said.

Attorneys claim Cox has a loophole that the law doesn't by allowing people to collect policy limits from insurers if a covered peril causes more than half of the damage.

If the past two years of relative calm give way to an active hurricane season, future litigation would continue to pit property owners against insurers in the dispute over what natural element caused most of the damage.

"Only way to get what you're entitled to as a rule is to threaten [insurance companies] with appearing in front of the jury," Michelson said. "That's why people like me make a living."

Tampa defense attorney John Garaffa, a senior associate at Butler Pappas Weihmuller Katz Craig, said insurance company experts base their opinions on National Weather Service data detailing whether wind or water hit an area first.



A.M. HOLT

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Tampa defense attorney John Garaffa, a senior associate at Butler Pappas Weihmuller Katz Craig, said insurance company experts base their opinions on National Weather Service data detailing whether wind or water hit an area first and how much time separated the two events.

Experts also point to water lines in homes and on nearby trees and structures to assess the cause. He said it is most difficult to determine the cause when there is no building left.

"There are examples of homes lifted off foundations and float away. That's primary flood damage," said Abate, a shareholder at Colodny Fass Talenfeld Karlinsky Abate. "When it looks like everything has blown up like a bomb, that's wind usually."

When cases are not that clear cut, he said insurers generally will pay the claims. Plaintiff attorneys disagree.

A recent Mississippi case decided by the 5th U.S. Circuit Court of Appeals tends to favor the insurance companies, attorneys on both sides agree.

Under this precedent, Hicks said homeowners are out of luck if wind and water worked together to destroy homes and make it difficult to separate the cause.

Coral Gables plaintiff attorney Gabrielle D'Alemberte, who works with the Law Offices of Robert L. Parks, said homeowners always had an uphill battle to recover money from insurers, and recent case law has created an even steeper burden.

In another blow to homeowners, the Louisiana Supreme Court ruled this week that an insurer was not liable for water damage caused by levee failures in New Orleans.

Hicks and Michelson urge people to buy federal flood insurance and — if the home value is above average — supplementing the federal policy with private insurance.

"People should realize that if they live anywhere near water, they have to have a flood policy in order to be sure that everything is covered," Hicks said. ■

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