

Thursday, September 15th, 2005
Baton Rouge, Louisiana

WHO WILL PAY?
WILL THE INSURANCE COMPANIES GET OFF THE HOOK?

Day after day, property owners in the greater New Orleans area are hearing the same thing from insurance company adjusters. "The damage to your homeland is flood related. If you do not have a separate flood insurance policy, there's really nothing we can do for you. Your damage was caused by flooding. I'm afraid you're out of luck." So, is there any recourse?

Following the overwhelming majority of natural disasters, where water is involved, there is a general rule of thumb. If the water comes from the sky down, the homeowner's policy applies. But if the water comes from the ground up, the damages are covered under the Federal Flood Insurance Program.

In the aftermath of Katrina, insurance industry representatives are being publicly cautious in what they say. But privately, they are saying that any responsibility to pay property owners will primarily be flood related, and not the obligation of insurance companies. Most companies readily agree that both wind and wind driven rain caused significant damage to dwellings throughout the Gulf Coast. But they point to the vast damage in the greater New Orleans area, coming from "flooding" emanating from Lake Pontchartrain.

If Lake Pontchartrain had overflowed from rainwater alone, there may be a stronger argument to be made that flooding caused a major portion of the damage throughout the greater New Orleans area. But that's not what happened.

There have been news reports that there were seven different breaks in the levee surrounding Lake Pontchartrain. A Time magazine report (September 2nd) concluded: It's possible that the levees just did not work the way they were supposed to. It's not even certain that the water came over top of the levees as the Corps claims. Congressional investigators, experts and even some Corps officers tell Time that the failure might have been caused by leaks in the barriers." if there were leaks, that might mean the levees had been poorly reconstructed or maintained."

If the levees cracked and leaked, then a strong argument can be made that one's homeowner's policy should be the primary payer for damage done. Flooding is generally assumed to be just that; a water bed that rises because of heavy rain or runoff. And there is a lot at stake here.

In New Orleans, only about 40% of the homes even have flood insurance. In outlying parishes, the percentage is even less. That means that if a determination is made that flooding was the major cause of damage, these homeowners, even if they have conventional insurance, will receive nothing.

Also note that flood insurance only pays a maximum of \$250,000. And that applies only if the homeowner has bought that much. Many homeowners buy much less. So someone with a house worth \$500,000 might only receive one half of that amount if in fact, they paid for full flood coverage.

The bottom line is that if flood insurance becomes the principal means of reimbursement, billions of dollars will be lost by homeowners in the greater New Orleans area.

An additional problem is one of the lengthy delays. It's quite apparent that the insurance industry is moving cautiously on this issue. They assume, with justification, that this whole issue will end up in the court system, and take a lengthy time to be litigated and appealed. They of course continue to make investment income, while the legal proceedings slowly proceed.. And homeowners have little recourse but to sit idly by, waiting for a decision.

These homeowners cannot begin reconstruction or renovation until they have the money to pay the contractor involved. So thousands of homeowners will be left stranded for many months, or even years. The question now is whether or not there are alternative legal approaches.

There is a quick way to get a legal determination on this important issue. A declaratory judgment lawsuit could be filed asking a judge in East Baton Rouge to rule on whether the damage is flood or storm, whether one's homeowner's policy should pay or should the damages be compensated by the Federal Flood Insurance Program.

And that is exactly what is happening. A lawsuit is just been filed in East Baton Rouge Parish domiciled in Baton Rouge. The purpose of the lawsuit is, quite simply, to speed up the whole process. It requests that a district judge make a determination as to what criteria applies. The damage from Lake Pontchartrain should either be determined to be flood damage, or storm related damage caused by the breaches in the levees and the seepage that occurred.

There will no doubt be efforts in the U.S. Congress to offer some type of bail out like we saw following 9/11. Remember the purpose for the settlements offered to family members, following the twin towers tragedy. The main purpose was to give protection to the US airlines involved as well as the insurance industry. You will be hearing the same arguments being made in Washington, because of hurricane Katrina.

There's nothing wrong in considering bailouts to insurers for what happened on the Gulf Coast. No one anticipated such vast damage. But the fact remains that there are a number of unanswered questions, and property owners need some answers. With some luck, the lawsuit filed this week may be the catalyst to bring the public

and private sector together, and get property owners the funds they need to repair their homes as possible.

To make the process work more quickly, the Governor, the Attorney General, and the Insurance Commissioner should all intervene in the law suit. This issue does not need to drag along. Some \$10 billion of reimbursement is at stake. This money can go a long way to rebuilding much of the damage throughout the greater New Orleans area. If it is not paid out, there's not much hope for a revitalized city. The stakes could not be higher, and a quick decision is needed.

"To build may have to be the slow and laborious task of years. To destroy can be the thoughtless act of a single day."
-- Sir Winston Leonard Spenser Churchill (1874-1965),

Peace and Justice.

Jim Brown