

## Supreme Court hears wind-water hurricane insurance argument

by AP-News

TALLAHASSEE, Fla. An insurance company lawyer argued to the Florida Supreme Court on Thursday that his client should not have to pay full policy limits for wind damage to a home destroyed mainly by flooding during Hurricane Ivan.

Florida Farm Bureau Casualty Insurance Co. wants the justices to reverse an appellate court decision that it must pay the \$65,000 policy limit although its adjusters say wind was responsible for only \$11,583.93 and the policy excludes water damage.

It's the first of many wind-water cases from the 2004 hurricane season to reach the Supreme Court and likely will set a precedent for others when the justices rule at a later date.

The decision will not apply to future hurricanes because the Legislature in 2005 changed state law to make it clear insurance companies do not have to pay for damages caused by excluded perils.

"It is undisputed that our covered peril did not cause the total loss," Elliot Scherker told the justices on behalf of Farm Bureau Casualty.

The 1st District Court of Appeal, though, decided Farm Bureau must pay policy limits to Eugene Cox for his home along Blackwater Bay near Milton in the Florida Panhandle.

The ruling was based on a 2004 interpretation of Florida's 1899 Valued Policy Law by the 4th District Court of Appeal. That decision never went to the Supreme Court, but Scherker argued it was an erroneous interpretation of the law.

The 4th District ruled in favor of Zennon Mierzwa, who lost his Fort Lauderdale home in 1999 to Hurricane Irene. The appellate judges ordered the Florida Windstorm Underwriting Association, predecessor of the state-created Citizens Property Insurance Corp., to pay full wind policy limits.

Cox's lawyer, Louis Rosenblum, argued both appellate courts had simply followed the letter of the law as then written no matter how unfair that may seem.

"The best argument from our position is the 2005 legislation itself," Rosenblum told the justices. "Because why in the world would they have changed it if it so clearly states what Farm Bureau says?"

Rosenblum says no one knows how many wind-water cases are pending but it's probably in the hundreds, nearly all from the Panhandle due to Ivan.

The 1st District recently ruled against Citizens in another of those cases, rejecting the company's argument that it was exempt from the Mierzwa ruling because of its unique position under state law.

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