

## Last-Resort Insurer Loses First Round in Florida Homeowners Legal Battle



TALLAHASSEE, Fla. May 27 (BestWire) — Citizens Property Insurance Corp. policyholders emerged victorious in round one of their high-stakes class-action lawsuit against the state-run homeowners insurer of last resort when a Leon County judge, upholding a 2004 state appeals court decision, ruled that they can be paid the full face value of their homeowners policies, even when hurricane damage is caused by flooding.

Leon County Circuit Judge Court Kevin P. Davey, in a May 26 ruling from the bench, granted summary judgement for plaintiff Scylla Properties. The case in the Tallahassee court is known as Scylla Properties LLC vs. Citizens Property Insurance Corp.

Citizens is a defendant in the lawsuit, where plaintiffs are demanding it pay full policy limits in instances where hurricane winds did minor damage or wasn't the major contributing factor in the loss of a structure, according to Citizens (BestWire, May 19, 2005).

Earlier this year, Judge Davey certified a class that involves "potentially thousands" of homeowners in the case, plaintiff attorneys have said.

Most plaintiffs are from Florida's panhandle, the region hard hit by Hurricane Ivan, which involved storm surge.

The Scylla case comes on the heels of the Florida Fourth District Court of Appeal's 2004 ruling in a case out of Broward County, Mierzwa vs. Florida Windstorm Underwriting Association. That court ruled that homeowners may be able to recover more in windstorm insurance than the amount of loss caused by wind, according to Citizens.

On May 26, Judge Davey "basically found that the (Fourth) District Court of Appeals, the Mierzwa case, got it right," Stuart Michelson, a Fort Lauderdale attorney that represents class plaintiffs, told BestWire. He ruled that Florida's "valued policy law" "can be interpreted in only one way, the way the Fourth District Court of Appeals interpreted it," he said, saying in the Scylla case alone, which involves about 500 homeowners whose homes were totally destroyed, concerns "more or less" \$250 million in coverage.

Attempts to speak with Justin Glover, a spokesman for Citizens, were not successful on the morning of May 27.

Samuel Bearman, a Pensacola-based attorney, with separate class-action suits in Escambia and Santa Rosa county courts against major private insurers, said Judge Davey's ruling "sets the stage for the important decision from the First District Court of Appeals. This is the first round and now we are going to the main event." The outcome of the lawsuit could affect every homeowners insurer in Florida, he said.

Sam Miller, a spokesman for the Florida Insurance Council, said on the morning of May 27 that he couldn't comment because he wasn't clear on the specifics of Judge Davey's ruling, but instead, referred to a statement issued by Florida Chief Financial Officer Tom Gallagher.

That statement said: "In March, I asked Citizens Property Insurance Corp. to drop individual lawsuits they had with their policyholders and to seek an expedited resolution of claims involving Florida's valued policy law," Gallagher said.

"Thousands of storm victims, especially in the Panhandle, have suffered for far too long without resolution of their claims," he said. Judge Davey upheld the previous district court of appeals ruling "that policyholders are entitled to being made whole when damage is caused by both wind and flood."

CFO Gallagher, a Republican who recently announced he's running for governor, said the ruling "reinforces what I have said all along — the people in Pensacola, whose homes were destroyed more than eight months ago, must be made whole. I applaud Judge Davey's ruling and urge Citizens and all insurers to immediately comply with the ruling."

The industry plans to appeal the case to the First District Court of Appeals in Tallahassee. "We believe Mierzwa was an incorrect ruling, and we hope to set the stage for the Florida Supreme Court to reverse it," Florida Insurance Council's Miller recently said. "The industry needs to have Mierzwa reversed."

Recent legislation effectively precluded any claims being filed after future storms on the basis of the Mierzwa decision.

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