

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
NO. 2008-IA-00645-SCT

MARGARET AND DR. MAGRUDER S. CORBAN

APPELLANTS

VERSUS

UNITED SERVICES AUTOMOBILE ASSOCIATION
a/k/a USAA INSURANCE AGENCY

APPELLEE

INTERLOCUTORY APPEAL FROM THE CIRCUIT
COURT OF HARRISON COUNTY, MISSISSIPPI

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court may evaluate possible disqualification or recusal.

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ALL HOMEOWNERS IN THE STATE OF MISSISSIPPI

Respectfully submitted,

BY:



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I. STATEMENT OF ISSUES

1. Is the water damage exclusion purporting to exclude concurrent or sequential contributing causes ambiguous and therefore void as to hurricane losses where multiple courts and parties have struggled for years and are unable to determine what the language means and how it affects Hurricane Katrina losses?

2. If construed to exclude losses caused by wind merely because water later impacted the property or to alter contract law requiring an insurer to prove what part of the loss was caused by an excepted event, does the water exclusion violate Mississippi public policy in the context of hurricane claims?

3. In an "all risk" homeowners' policy containing an anti-concurrent cause clause as part of its exclusion, which party -- the insurance company or the insured -- must establish **causation** of that part of the loss that is excluded?

4. Did not the Fifth Circuit Court of Appeals err in its "Erie-guess" in *Leonard* and *Tuepker* that under Mississippi insurance contract law "**indivisible damage**" caused by both wind and water in a hurricane is excluded under the **contract terms** of homeowners' policies at issue?

5. Does the USAA insurance policy preclude recovery for hurricane loss where the efficient proximate cause is a covered event?

6. Did the trial court err in its interpretation of the anti-concurrent cause clause?

II. STATEMENT OF THE CASE

A. Statement of Facts

This case involves the devastating effects of Hurricane Katrina on the Mississippi Gulf Coast and the home of Dr. and Mrs. Corban. In 1989, Dr. Magruder Corban, then a practicing orthopedic surgeon, and his wife Margaret purchased their dream home in Long Beach, Mississippi. The historic home, built in 1896, is depicted below in its pre-Katrina grandeur. (R. 1451)



Having been insured with the company since 1958, Dr. Corban chose USAA for homeowner's coverage. At the time of Hurricane Katrina, the home was insured under an "all risk" policy providing coverage of \$750,000.00 "against risks of direct, physical loss". (R.E. 38) In addition, the separate structures on the property, e.g., garage, were covered against "direct physical loss" for

\$135,000.00; and the Corbans' personal property was insured for named perils including "windstorm" for up to \$562,500.00. (R.E. 25, R.E. 29 and R.E. 39)¹

As reported, "Hurricane Katrina's winds and storm surge reached the Mississippi coastline on the afternoon of August 28, 2005, beginning a two-day path of destruction through central Mississippi." www.wikipedia.org/wiki/effect_of_Hurricane_Katrina_on_Mississippi. (R.E. 66) The Corban home was in the most vulnerable northeast quadrant of the storm. "The Long Beach area experienced Hurricane Katrina for over 17 hours. There were hurricane force winds over Long Beach until 4PM on August 29, 2005, well after the eye made landfall and moved northward." (R. 884) Wind speeds at the Corban home reached 130 mph sustained winds, with gusts up to 150 mph. (R. 898) These destructive winds removed the porch and roofing, exposing the interior to the winds and rains of the storm.² As noted by forensic engineer Ted Biddy:

In the case of the Corban residence . . . the obvious mechanism of destruction by the winds was due to breached and opened windward sides of walls from wind blown debris and blowouts on the lee sides of the building Specifically, the house's southeast sides were opened by wind blown debris which then caused blowouts of lee side windows, doors and walls. The destroyed and blown away detached structures either suffered the same type failure as the house or failure of bottom of wall pullouts which allowed these small structures to blow away. (R. 754)

¹The "windstorm" provision provides coverage for loss caused by "rain, snow, sleet, sand or dust" so long as "the direct force of wind or hail damages the building causing an opening in a roof or wall." (R.E. 39)

² While the cause of a loss obviously cannot be ascertained from photographs alone, additional photographs of the damage are contained in the expert reports of Ted Biddy (R. 725 - 882) and Rocco Calaci (R 883 - 903).

