

## Third Mississippi Hurricane Katrina Jury Trial Begins



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On March 12, 2007, the third Mississippi Hurricane Katrina jury trial commenced that addresses the "wind versus water" issue. This issue is the basis for hundreds of other lawsuits across the Gulf South region. Edward Gemmill, a Biloxi city councilman, sued his insurer, State Farm, for the full value of his property loss, as well as damages for emotional distress and punitive damages for the alleged bad faith conduct by the insurer.

When Hurricane Katrina reduced Mr. Gemmill's house to a slab, State Farm paid him the full amount of his flood insurance policy, but denied all coverage for loss of the home and its contents under his homeowner's policy. Mr. Gemmill insisted that wind caused the property losses in advance of the flood waters.

In his opening statement, counsel for Mr. Gemmill claimed that State Farm had paid the flood claim only because such payments are subsidized by the federal government under the National Flood Insurance Program, and did not cost State Farm anything. Losses under homeowners' policies are paid by the insurer itself. Mr. Gemmill's counsel argued that State Farm had improperly attempted to shift the burden of proving that the losses were caused by wind onto the insured. State Farm insisted that this is proper, given the basic principle that policyholders are entitled to recover only for damages that are covered by their policies. Counsel for Mr. Gemmill countered that once the insured demonstrates the existence of a covered cause of loss (here, wind), the burden shifts to the insurer to prove that the losses were caused by an excluded cause of loss (flood).

Policyholders successfully asserted similar arguments in *Broussard v. State Farm*, an earlier Mississippi jury trial in which State Farm was held fully liable for property losses and punitive damages because they did not prove the losses were caused by flooding. The *Broussard* case is now on appeal. *Gemmill v. State Farm* is before Judge L.T. Sentor Jr., who presided over *Broussard*. *Gemmill v. State Farm* should conclude later this week.

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