

NICAUD, SUNSERI & FRADELLA, L.L.C.
ATTORNEYS AT LAW



HURRICANE KATRINA
INSURANCE INFORMATION

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“How to Collect your Insurance Money”

Presented by:

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**Metairie Hotel
#4 Galleria Boulevard
Metairie, Louisiana**

March 9, 2006

**1:00 p.m. - 4:00 p.m.
6:00 p.m. - 9:00 p.m.**

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The Law Firm of Nicaud, Sunseri & Fradella is conducting this seminar as a public service to empower the policy holder in collecting the full extent of all damages arising from losses due to Hurricane Katrina. In the greatest natural disaster in the history of the United States, insurance companies are utilizing varying tactics of non-payment, deficient payment and/or late payment of Hurricane Katrina claims. However, the law provides severe penalties for homeowner's insurers not timely paying insurance claims, including double damages and attorney=s fees. Unfortunately, most policyholders do not know the favorable remedies provided by Louisiana law requiring insurance companies to fairly deal in settling claims. The Law Firm of Nicaud, Sunseri & Fradella hopes to empower you with the knowledge and confidence to obtain a complete and comprehensive settlement from your insurance company.

Sincerely,

Albert J. Nicaud

J. Douglas Sunseri

Dawn Danna Marullo

I. Common Problems with insurance companies causing you to attend this seminar

- S Multiple Adjusters – Start process over
- S Allocation of all damages to flood
- S Refusing to timely pay property damages
- S Deficient payment of damages
- S Claim Adjuster not responsive to inquiries
- S Refusing to approve work for damaged items
- S Refusing to timely pay Additional Living Expenses (ALE)

II. Hurricane Claims - Adversarial Process

- S Insurance Company Will Not Voluntarily Pay for Various Coverages
- S Policyholder must Act as an Advocate for His/Her Claim
- S Policyholder must Endure Negotiation
- S Policyholder cannot be “bashful” or “feel guilty” for Requesting Payment of Damages

III. Insurance Policy - General Principles

- A. Contract - La. Civil Code Article 2045 – “Determination of the common intent of the parties (insured and insurer)”
 - S The terms of the contract constitutes the law between the parties
 - S Words and phrases construed using their plain and ordinary meaning unless the words have a technical meaning
 - S If the terms of the insurance policy are clear and explicit and lead to no absurd consequences, then the insurance contract must be enforced as written

B. Insurance Contracts Construed in Favor of the Insured and Against the Insurer

- S Insureds and insurers are free to contract and limit liability, and to enforce reasonable conditions of the policy
- S Insurance policy read broadly in favor of coverage and not denial of coverage
- S Any ambiguity in the terms of the insurance contract should be construed against the insurer and in favor of the insured.
- S If there are more than two (2) reasonable interpretations of exclusions, the interpretation in favor of coverage must be applied.

IV. **The Declaration Sheet – “Dec Sheet”**

- S Policy Number
- S Policy Period
- S Names Insured
- S Types of Coverage
- S Description of Insured Property
- S Limits of Liability

V. **Insurance Policy**

- S Definitions Section
- S Coverages
- S Exclusions
- S Conditions

VI. **Types of homeowner’s policies**

H01 Named Peril (limited, specific)

H02 Named Peril (broad, specific)

H03 Basic (Standard, all risk)

H04 Renter's Coverage

H06 Condominium/Townhouse Coverage

VII. Standard H03 Coverages:

Coverage A Dwelling

Coverage B Other structures

Coverage C Personal property

Coverage D Loss of use

Section I Perils Insured Against
(Fire, windstorm, explosion, etc..)

Section II Liability coverage
(Not part of today's discussion)

Types of property covered:

Coverage A - Dwelling

- 1) Residence
- 2) Materials and supplies located on premises used to construct or repair residences.

Coverage B - Other structures

- 1) Other structures on the premises set apart from the dwelling;
- 2) Does not include other structures used for a business; and
- 2) Limit of liability is 10% of limits of Coverage A.

Coverage C - Personal Property

- 1) Covers your personal property located "anywhere in the world"
- 2) Special limits for certain categories. Examples: money, gold, trailers, jewelry,

property used for business purpose, etc.

Coverage D – Loss of use

A. You have option to choose:

1. Additional Living expenses (ALE)
“increase in living expenses incurred”; and
2. Fair rental value.

B. Only two weeks maximum for civil authority.

VIII. Increased cost of compliance

NFIP will pay up to \$30,000.00 for:

- 1) Demolition;
- 2) Flood proofing, and/or
- 3) Elevating the structure above BFE.

* Building must be rebuilt to qualify and must be rebuilt to same occupancy as before (i.e. single family dwelling)

* Must be completed within two years

- \$30,000 is in addition to flood limits but both cannot exceed \$250,000.00.

COMPARISON OF H03 & FLOOD COVERAGE

<u>H03</u>	<u>FLOOD</u>
Loss of use (ALE & Fair Rental)	<u>No</u> Loss of use
Covers fences	<u>No</u> fences
Covers self propelled (riding lawnmowers, handicap scooters, etc)	Only covers if stored vehicles indoors
Penalty provisions against Insurer	No penalty provisions against NFIP

SECTION 1 PERILS AGAINST INSURED:

All risk coverage for dwellings (A) and other structures (B).

Exclusions mostly involve property that is vacant.

Also covers most perils (fire, explosions, theft, vandalism, etc.)

SECTION 1 EXCLUSIONS:

“C. Water damage, meaning:

(1) Flood, surface water, waves, tidal water or spray from any of these, whether or not driven by wind,”

Direct loss by fire, explosion or theft resulting from water damage is covered (i.e., looting after a flood is covered)

FLOOD POLICIES:

A. Underwritten by FEMA

B. Serviced by Standard Insurers

“Flood” is defined as:

A. Overflow of inland or tidal waters

B. Unusual and rapid accumulation of surface waters from any source

C. Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water ...”

IX. Dealing With Your Adjuster

Document your claim

1) Take photographs of damages;

2) Prepare inventory of personal property

Approximate date of purchase

Approximate price paid new

3) Use internet catalogues and newspaper ads as source for replacement cost

4) Send copy of receipts if available

- 5) ***Document every phone call***
- 6) Send everything certified mail, Federal Express, facsimile with confirmation or e-mail with confirmation.

Get estimates to prove Loss

- 1) Contractors
- 2) Public adjuster
- 3) Independent adjuster

You must provide "Satisfactory Proof of Loss"

X. Penalties and attorney's fees

- 7) Insurance Company has duty of Good Faith and Fair Dealing
- 8) Insurance Company must pay a fair amount within 30 days of satisfying proof of loss or "shall" pay additional 25% penalty and attorney's fees.
- 9) If no payment within 60 days of satisfactory proof of loss, penalty "up to" double damages, plus attorney's fees.

Non-payment must be "arbitrary and capricious and without cause."

XI. Dealing With Contractors

- A. Hire only Louisiana State Licensed or Registered Contractors
 - S Out of town contractors - Cheaper but not easy to locate - if follow up work needs to be done it is hard to locate or may not return to Louisiana
- B. Get at least three (3) bids or estimates for the work to be conducted on your residence - Prevents Price Gouging
- C. Request References from Contractors
 - Secretary of State
 - Board of Contractors
 - Better Business Bureau
- D. Upon Hiring - Execute Written Contract
 - S Specific scope of work
 - S Time period for completion

- S Assessment of attorney=s fees for failure to complete job
- S Change orders, upgrades or additional scope or increase in cost in writing

E. Only sign and accept contract when understanding all terms.

When project begins some contractors require a percentage down (typically 10%)- Pay in installment equating with work completed

General Advice - During Renovation

- S Do not pay entire price for project at once
- S Keep log of payments
- S Do not pay cash, if you must pay cash, get a signed receipt
- S Obtain invoice for payments
- S Do not pay last installment unless completely satisfied with the job because
it is unlikely they will come back after obtaining full payment
- S Document the conversations with the contractor
- S Keep thorough file for project completed and work not completed
- S Communicate with the Contractor - Do not let the contractor Abully@ you around
- S Be firm in your expectations
- S Remember – you will be staring at any problems for years to come

H. Obtain Lien Release Upon Completion of Job from Contractors and Sub-Contractors

XII. Additional Living Expenses

A. What is additional living expense (ALE)?

Additional living expense is money tendered by your insurance company to help pay for food, housing and other essentials of daily living when your residence has been rendered “uninhabitable” because of a “covered” peril. An individual must have insurance coverage for ALE under their homeowner’s insurance policy in order to be eligible for payment of ALE.

B.Homeowner’s Insurance Policy v. National Flood Insurance Policy

ALE is only provided by a homeowner’s policy. The National Flood Insurance Policies do not provide coverage for ALE.

C.What qualifies an individual for ALE?

An individual may qualify to receive ALE if their house was damaged and

“uninhabitable” due to WIND damage, NOT FLOOD. Specifically, the residence must have sustained actual structural damage due to WIND.

D. What is covered by ADDITIONAL LIVING EXPENSES?

ALE is provided for “ADDITIONAL” expenses outside the ordinary expenses incurred by an individual pre-Katrina or pre-Rita. For example, if you are renting an apartment that has a kitchen enabling you to cook your meals, you will likely not be entitled to ALE. Simply put, you had a kitchen before KATRINA/RITA wherein you prepared your meals and you have one now. ALE are only paid for those expenses beyond what you would typically expend to eat.

On the other hand, if you are living in a hotel and are required to eat out every night, you may be entitled to additional living expenses to cover the ADDITIONAL costs of eating out. Just remember, keep all receipts and document your additional expenses.

E. How long can I receive ALE?

The length of time within which a homeowner's insurance policy will tender ALE is based on the following:

- S The length of time required to rebuild the house; or,
- S If you permanently relocate, the length of time it takes an individual to become settled elsewhere, which is sooner.

Please note, insurers have a duty to mitigate their damages, or lessen their loss. For example, if your roof is leaking you are required to take simple measures to “temporarily” repair the roof to prevent further damages until the existing roof is replaced. Importantly, the insurance company will repay you for expenses incurred to “temporarily” repair your roof.

F. Loss of Use under Homeowner's Insurance Policy

- S Although loss of use encompasses ALE, one must remember that a policy holder may also suffer loss of use by Civil authority.
- S Civil authority includes the prevention of an individual from returning to live in their residence as a result of an order by the civil authorities, such as the mayor or governor. Typically, the Civil authority's loss of use provision in your insurance policy was limited to two (2) weeks.

- S Initially, the insurance companies tendered payment for loss of use in the form of ALE and “civil authority”. However, the insurance industry has become more stringent when providing payments for loss of use and are not as eager to tender funds.

XIII. Deficient Payment - Underpayment of Claim

A. Reasons for Underpayment

- S Inexperienced Claims Adjusters
- S Unit Cost Based on National Average instead of Post-Katrina Market Conditions
- S No Consideration for Labor Shortages
- S No Consideration for Increased Material Costs
- S Computer Program Utilized by Claims Adjuster Not Updated
- S Insurance Company Underpays Hoping Homeowner won't File Supplemental Claim
- S Insurance Company Underpays and Hopes Claim Prescribes - August 29, 2006

B. What To do If Underpayment

- S Inform Adjuster as to Your Knowledge of Penalties and Attorneys Fees
- S Ask for Initial Estimate - Directives of Louisiana Dept. of Insurance Prohibits AWrite Downs@
- S Estimate from Licensed General Contractor or CPA (Business Interruption Claim)
- S File Supplemental Claim
- S Speak to Supervisor for Unsatisfactory Results - or Supervisor=s Supervisor - Climb the Corporate Ladder
- S Set a Mediation - See Louisiana Insurance Department - www.lidi.state.com
- S File Complaint with Louisiana Department of Insurance

- S Hire a Lawyer
- C. Document and Diary all Communications with Claims Adjuster
- D. Persistence is the Key - Won't Quit Until Obtain a Fair Resolution

XIV. Myths - Redefining the Truth

- 1)Government Sets the Unit Labor Cost for Damages/Reimbursement; Charges Reasonable and Customary - Post-Katrina Market Conditions
- 2)Claims Adjuster/Supervisor's Decision is Final - The Judge or Jury's Determination is Final Word. (Remember, chances are the Judge and Jury had 6 feet of water in their living room);
- 3)Insurance Company is Required to Approve Work and Contractor;
- 4)Homeowner is Required to Obtain Multiple Estimates;
- 5)Repairs Must be Completed with 180 days of Incurring Damages;
- 6)The Louisiana Insurance Commissioner or the Legislature Waived Penalty Provisions or Double Damages and Attorney's Fees for Late or Insufficient Payment;
- 7)The Judges will not Enforce the Penalty Provisions for Late of Insufficient Payment;
- 8)Mold Remediation is Not Covered;
- 9)Policyholder Must Sign a Final Release to Receive Supplemental Payment;
- 10)Policyholder Not Entitled to Homeowners Coverage since Majority of Damages is from Flood - New Law Prohibits Adjuster for Denying Claims Based on Waterline - Burden on Insurer to Show Damaged by Flood;
- 11)Roofs Don't Need to be Replaced Since No Visible Damage - Simply Repair of Displaced Shingles;
- 12)Items - Dried Out - Don't Need to Be Replaced;
- 13)Must File Your Taxes Before Submitting Business Interruption Claim;
- 14)Not Responsible for Granite Counter Tops Damaged While Removing

Cabinets.

XV. August 29, 2006 - D -Day

- S Must File a Lawsuit Prior to August 29, 2006 to Preserve Right to Negotiate An Unresolved Claim after August 29, 2006
- S Louisiana Legislature May Extend Time Period in this Upcoming Session

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J. DOUGLAS SUNSERI

Since his admission to the Louisiana Bar in 1988, J. Douglas Sunseri has practiced in diverse areas of the law. From 1990- 1994, J. Douglas Sunseri worked under Attorney J. William Becknell, the legal counsel for Mr. John Mecom, Jr. and his affiliated companies. Mr. Mecom was the initial owner of the New Orleans Saints and had numerous holdings in oil & gas, hotels, real estate, professional sports and related businesses. As a result, Mr. Sunseri was fully educated in broad areas of law, business and insurance.

Mr. Sunseri has participated in litigation involving, employees, insureds, employers, insurers, and self-insured funds for property/casualty, employers' liability and worker's compensation claims. Other areas of practice consist of personal injury, insurance coverage, flood claims, hazard claims, wind-driven rain claims, business interruption, errors and omissions liability for insurance agents/insurance companies. Mr. Sunseri's practice also encompasses commercial litigation, incorporations, corporate agreements, licensing for intellectual property, real estate, estate planning, wills, trusts and successions. Since Hurricane Katrina, Mr. Sunseri has specialized in a broad range of insurance issues including insurance coverage, flood v. wind-driven rain, business interruption and contents claims.

Mr. Sunseri's litigation experience includes jury trials in state and federal court. Mr. Sunseri also practices before workers' compensation judges with the Louisiana Department of Labor, administrative law judges and Special Masters assigned by the National Football League. He has directed litigation to the United States Supreme Court in connection with the National Football League and the National Football League Players Association(NFLPA). Mr. Sunseri has conducted numerous seminars on topics involving Hurricane Katrina, insurance claims, flood v. wind-driven rain claims, employment issues, workers' compensation and estate planning.

From 1988-1998, Mr. Sunseri served as a Contract Advisor for the National Football League Players Association representing over 50 NFL players in various capacities. From 1996-present, Mr. Sunseri was legal counsel for licensing agreements involving the National Football League (NFL), NFLPA, Professional Golf Association (PGA), NCAA, Super Bowl, Sugar Bowl, LSU, Tulane, Ohio State, University of Florida, Florida State, Texas A&M, the New Orleans Saints, Coach Mike Ditka and Coach Tommy Bowden.

Since Hurricane Katrina, Mr. Sunseri has made numerous appearances on WDSU-TV Channel 6 newscast as a legal analyst on insurance issues. Also, he has testified as an expert before the Louisiana Legislature regarding business and insurance issues.

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ALBERT J. NICAUD

Mr. Nicaud is a graduate of the University of New Orleans and received his law degree in 1988 from Loyola Law School of New Orleans.

He began his career as house counsel for USF&G Insurance Co. There he developed a broad-based knowledge of the insurance industry, insurance policy provisions and claims handling.

His law practice consists mainly of civil litigation, business transactions, wills and successions.

He currently serves as a Special Assistant to the Louisiana Office of the Attorney General and as a bar examiner grading bar exams for the Louisiana State Bar Association.

Mr. Nicaud has extensive litigation experience before district judges, juries, hearing officers and administrative law judges.

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DAWN DANNA MARULLO

Dawn Danna Marullo is entering her 4th year as a member of Nicaud, Sunseri & Fradella. She is a graduate of Loyola University Law School. While at Loyola, Ms. Marullo was selected as a member of the Moot Court Staff. As a member of the Moot Court Staff, Ms. Marullo was a teaching assistant and instructed underclassmen as to proper procedure and technique for writing appellate briefs and arguing before Courts of Appeal. Ms. Marullo was also a member of the Loyola Board of Advocates Trial Advocate Competition Program and competed in Louisiana and Texas. Ms. Marullo served as an intern at New Orleans Municipal Court and at New Orleans Criminal District Court.

Ms. Marullo's practice consists of insurance and worker's compensation, commercial litigation, divorce, community property, custody, and criminal defense. Since Hurricane Katrina, Ms. Marullo has specialized in a broad range of insurance issues including insurance coverage, flood v. wind-driven rain, business interruption and contents claims.