system: the governor, insurance companies, the business community, legislators, and insurance company lawyers. The lawyers for injured workers and injured workers themselves are virtually unimportant in the reappointment process of a sitting judge.

If Art. V judges in the state of Florida have their independence in any way compromised in a manner close to what the workers' compensation judges must withstand, then our entire judicial system is in grave jeopardy.

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Another Side Speaks to Florida's Valued Policy Law

"Florida's Valued Policy Law" (April) is a tale of two articles: First, the author, Mr. Garaffa, did an excellent job in reviewing Florida's valued policy law and the pertinent cases regarding that law. However, the author's criticism of *Mierzwa v. Florida Windstorm Underwriting Association*, 877 So. 2d 4 (Fla. 4th DCA 2004), was unfair and inaccurate based on the following:

1) The author repeatedly argued that *Mierzwa* means that when an insured has suffered a total loss of his house by conbination of wind and flood and he has both wind and flood insurance he will be "enriched" by the loss and this devastation of his house will become a "profit-making venture" for the insured. This is simply not true. It must be kept in mind that the insured paid for both insurance policies. Therefore, if he benefits from both policies, it is because he was farsighted enough to purchase both policies.

Second, and more important, if the payment of the policy limits by both the wind insurer and the flood insurer do occur and if that means that the insured has more money than is necessary to rebuild his house, he is required to pay back the federal government, as the flood insurer, any amount of money above the amount required to rebuild the house. The federal government is subrogated to this "overage" and, therefore, there will never be a "double compensation" for the same property as alleged by the author.

2) Under Mr. Garaffa's view of what the law should be, if wind caused the insured's house to be damaged to the extent that the cost to repair the wind damage is, for example, 51 percent of the value of the house, the policy limits will be paid. However, if the damage caused by wind will cost 49 percent of the value of the house to repair it, the insurer will pay only 49 percent of the policy limits. This would be totally illogical.

3) The author ciritcizes *Mierzwa* as if, after the total loss of a house in a hurricane due to both wind and flood, it is easily discernible to determine what percentage of the damage was done by wind and what percentage of the damage was done by flood. This is impossible to do after a storm, and only with expert opinions can some idea be developed. Without *Mierzwa*, the insureds are victimized by the common practice of the wind insurer blaming flood and the flood insurer blaming wind and the insured not getting the money to rebuild his house, despite that he bought and paid for both a wind policy and a flood policy.

4) The *Mierzwa* ruling is not only perfectly consistent with a literal reading of the statute, but also it is consistent with prior Florida case law. *Wallach v. Rosenberg*, 527 So. 2d 1386 (Fla. 3d DCA 1980), makes the point that, when an insured risk combines with an excluded risk to produce a loss, this concurrently caused loss is covered under an insurance policy.

I have represented many insureds regarding their claims against their insurers and their insurers, blaming flood, refused to pay for the total losses of houses. The *Mierzwa* case is well reasoned and correct, and hopefully the insurance industry will not be able to use its power and influence to undermine it.

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