

Missouri Lawyers

www.molawyersweekly.com

WEEKLY

■ DEFENSE VERDICT

Apartment owner loses negligence case – Insurance company claims it is not held to a higher standard

MEDICAL MALPRACTICE

- **Type of Action:** Negligent failure to procure insurance
- **Type of Injuries:** Property damage; economic
- **Court/Case Number/Date:** St. Louis County Circuit Court/03CC-003912/April 28, 2005
- **Caption:** Clearbrook Houston LP v. Gissy, et al.
- **Judge, Jury or ADR:** Jury
- **Name of Judge:** Emmett O'Brien
- **Verdict or Settlement:** Defendants' verdict
- **Special Damages:** \$2,155,460 for repair costs, lost rent, and the settlement, attorney's fees and expenses arising out of collateral litigation
- **Allocation of Fault:** N/A
- **Last Offer:** \$200,000
- **Last Demand:** \$1.1 million
- **Attorneys for Defendants:** Ryan J. Gavin and Mandy J. Hobson, Greensfelder, Hemker & Gale PC, St. Louis
- **Attorney for Plaintiff:** Steven M. Hamburg, Summers, Compton, Wells & Hamburg, St. Louis
- **Insurance Carrier:** Fireman's Fund Insurance Company
- **Plaintiff's Expert:** Gregory G. Deimling, Cincinnati (responsibilities of insurance brokers and risk management)
- **Defendants' Expert:** Jerry Milton, Birmingham (responsibilities of insurance brokers)

The owner of an apartment complex that sustained flood damage has lost its St. Louis County negligent failure to procure insurance case against an insurance broker and his employer.

Clearbrook Houston LP is the owner of a 178-unit apartment complex in Houston, Texas, and is under the management of Kohner Properties, Inc. of St. Louis. In 1998, Kohner transferred its insurance to Steve Gissy, an insurance broker with Adrian N. Baker & Company in St. Louis.

Gissy procured property insurance — including coverage against flood — for



Ryan J. Gavin



Mandy J. Kamykowski

all properties in Kohner's portfolio. The flood coverage excluded losses sustained at properties located in federally designated flood zones. At the time Gissy first procured insurance, none of Kohner's holdings were located in flood zones.

In April 2000, the Federal Emergency Management Agency proposed changes to the flood maps in Houston. The changes were finalized in November 2000 and the Clearbrook apartment complex was placed in a flood zone — but Clearbrook, Kohner and Gissy were unaware of the changes. When Clearbrook's insurance policy expired in March 2001, Gissy obtained a new policy that contained the same exclusion for flood loss at properties located in flood zones.

On June 9, 2001, Clearbrook sustained flood damage caused by Hurricane Allison. Half of the apartments operated by Clearbrook took in six to 12 inches of water that quickly receded. The insurer denied a claim based on the flood zone exclusion, and Clearbrook was subsequently involved in litigation with its insurance carrier, an independent adjusting firm and a repair contractor.

Clearbrook claimed that Gissy was negligent for failing to discover that Clearbrook was in a flood zone and

for failing to obtain a National Flood Insurance Program policy of insurance. Clearbrook contended that Gissy failed to investigate Clearbrook's status by either asking Kohner whether any properties were in flood zones or through alternative means.

Clearbrook further alleged that Gissy held himself out as an expert in risk management who would do more than simply procure their insurance, and therefore, was held to a higher standard of care. Clearbrook requested damages of \$2,155,460 for repair costs, lost rent, and the settlement, attorney's fees and expenses arising out of the collateral litigation.

Gissy and Adrian N. Baker & Company presented evidence that Gissy did ask Kohner whether any properties were located in flood zones and was told "none." The defendants further argued that Gissy's reliance on this information from Kohner satisfied his duty of care and was consistent with industry customs and practice. The defendants also denied that their representations of skill and experience subjected them to a higher standard of care.

After a four-day trial, the jury returned a verdict in favor of both defendants.

According to the plaintiff's attorney, Clearbrook has filed a motion for new trial. He claims the court's jury instruction was flawed since it required the jury to find an element that was not part of Clearbrook's cause of action, which allowed the jury to return a verdict that shifted the duty to investigate whether the property was in a flood zone from Adrian N. Baker & Company to Clearbrook. **mo**