

Justice Watch

Condos still battling Australian insurer four years later

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By: John Pacenti

The start of hurricane season is a bitter reminder for residents of a number of South Florida condominium towers that they are [still battling](#) insurance giant QBE in federal court in what seems like a never-ending effort to get the Australian company to pay for damages wrought by Wilma in 2005.

Sydney-based QBE is one of the largest insurance carriers in the world and the top private insurance carrier in Florida for condo associations, insuring nearly \$20 billion in property.

"We are 3½ years out from the storm, and a lot of communities are still dealing with the problems of both trying to rebuild and collect," said Daniel S. Rosenbaum, a partner with Katzman Garfinkel Rosenbaum in West Palm Beach.

Hurricane Wilma was the most intense storm ever recorded in the Atlantic basin, causing more than \$20 billion in damage in the United States. The October 2005 hurricane swept east from the Gulf of Mexico, over the Everglades and across South Florida and was particularly rough on older condo complexes.

While some condo associations have begrudgingly settled with QBE, Rosenbaum has not been afraid to take insurance giant QBE to trial for clients with damage in the millions of dollars.

QBE has tapped some heavy hitters to fight its legal battles in South Florida, including Raoul Cantero, a former Florida Supreme Court justice now with White & Case in Miami, and Rodolfo Sorondo, a former 3rd District Court of Appeal judge now with Holland & Knight in Miami.

"They are muscling up," Rosenbaum said. "From a legal point of view they are being smart. The idea they have is to get better and better legal talent and try to outgun the plaintiff's attorneys."

He said he typically goes up against four or five firms representing QBE. "It's a David vs. Goliath situation."

Cantero did not return phone calls for comment, and Sorondo referred questions to William Berk, lead trial counsel for QBE in the South Florida cases. He is with Berk Merchant & Sims in Coral Gables and said QBE does not comment on pending litigation.

QBE's Florida legal team laid out its arguments in a 2007 interview with the Daily Business Review, saying many of condo association claims were fraudulent, "inflated, exaggerated and unfounded."

Attorneys for the associations say QBE hopes to force their clients into unfair settlements to avoid court costs.

"They are willing to heavily lawyer up and spend millions and millions of dollars to fight," Rosenbaum said. "That is a business decision they make. They always say the chickens come home to roost in the federal system."

Once a verdict on storm damage against QBE is upheld, Rosenbaum can file a new bad faith lawsuit against the company that potentially exposes it to treble damages.



Daniel Rosenbaum

Pending litigation

Australian insurance giant QBE faces a wave of litigation from condominium associations with buildings damaged by Hurricane Wilma in 2005. The cases include:

v Chalfonte, Boca Raton, \$8.1 million judgment on appeal, U.S. District Judge Donald M. Middlebrooks

v Buckley Towers, North Miami Beach, \$25 million judgment, appeal expected, visiting Senior U.S. District Judge Richard W. Goldberg

Isola, Miami, \$6 million claim set for trial June 8, U.S. District Judge Donald Graham

King Cole, Bay Harbor Islands, \$20 million claim set for trial July 20, U.S. District Judge Donald Graham

Dome Condominiums, North Miami, \$9.4 million claim set for trial Sept. 14, U.S. District Judge Patricia Seitz

Regency of Palm Beach, Palm Beach, \$4 million in claim set for trial Jan. 25, U.S. District Judge Kenneth Marra

Shaker Village, Sunrise, \$20 million claim, not set for trial, U.S. District Judge Federico Moreno

"They are playing with fire," said Rosenbaum, who has spearheaded about 30 claims against QBE. He settled two on the eve of trial but scored his biggest victories with juries.

He won an \$8 million judgment for Chalfonte in Boca Raton in 2007 and landed a \$25 million verdict for Buckley Towers in February. The 500-unit North Miami Beach complex faces possible condemnation proceedings by Miami-Dade County.

QBE appealed the Chalfonte case to the 11th U.S. Circuit Court of Appeals in Atlanta, which sent several questions to the Florida Supreme Court for review.

The 11th Circuit said Florida courts have not definitively answered questions on breach of implied warranty of good faith by insurers for failing to investigate and assess a claim in a reasonable period of time. The appellate court also wants to know whether a hurricane deductible can be applied when an insurer breaks state law, among other inquiries.

"It clearly will be a case that will have significance," Rosenbaum said.

QBE also has challenged the Buckley verdict, filing pleadings in district court arguing judicial bias and jury contamination.

For some of these complexes, time to make repairs may be running out.

"We have leaking buildings still," said Jack Higgins, a board member of the King Cole Condominium Association in Bay Harbor Islands. "We have a roof issue they don't recognize, and they have been patching

it.”

With the 2009 hurricane season unfolding, complexes like King Cole may not be able to withstand another tropical tempest.

“You can live with some amount of water intrusion and some amount of loss through air conditioning units,” Rosenbaum said. “What you can’t live with is if we have another storm in South Florida. That would be catastrophic.”

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Daniel Rosenbaum photo by Melanie Bell