



MISSISSIPPI INSURANCE DEPARTMENT

501 N. WEST STREET, SUITE 1001
WOOLFOLK BUILDING
JACKSON, MISSISSIPPI 39201
www.mid.state.ms.us

MAILING ADDRESS
Post Office Box 79
Jackson, Mississippi 39205-0079
TELEPHONE: (601) 359-3569
FAX: (601) 359-2474

MIKE CHANEY
Commissioner of Insurance
State Fire Marshal

MARK HAIRE
Deputy Commissioner of Insurance

July 13, 2011

Mr. Kevin Buckel
msinsurancebill@cableone.net

SENT VIA EMAIL

Re: Burden Of Proof Legislation

Dear Mr. Buckel:

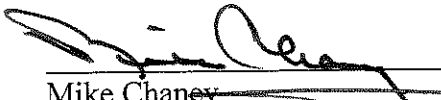
This letter is in response to your inquiry to the Mississippi Insurance Department concerning the above-referenced matter.

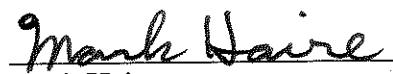
Please be advised that we support legislation which would codify the rulings in existing case law holding that an insurer has the burden of proving by a preponderance of the evidence that any exclusion in an "all perils" homeowners policy applies to the cause of action. The specific language we support can be found in the Committee Substitute for House Bill 203, which was considered during the 2011 Legislative Session. A copy of the Committee Substitute for House Bill 203 is attached for your convenience.

We believe that codifying the burden of proof as set forth in existing case law would protect consumers by moving cases through the system with much greater efficiency. This could be particularly helpful where there is a large volume of cases after a catastrophic event, such as Katrina.

We hope you find this information helpful.

Sincerely,


Mike Chaney
Commissioner of Insurance


Mark Haire
Deputy Commissioner

By: Representative Jones (111th)

To: Insurance; Judiciary A

Proposed

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 203

1 AN ACT TO PROVIDE THAT, IN ANY ACTION FOR DAMAGES BY THE
2 POLICYHOLDER AGAINST A PROPERTY AND CASUALTY INSURER UNDER AN "ALL
3 PERILS" COVERAGE POLICY, THE INSURER HAS THE BURDEN OF PROOF AS TO
4 THE APPLICATION OF ANY EXCLUSION IN THE POLICY; AND FOR RELATED
5 PURPOSES.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 SECTION 1. (1) In any civil action against a property and
8 casualty insurer by the policyholder under an insurance policy
9 purporting to provide "all perils" coverage that alleges the
10 failure of the insurer to pay a lawful claim made under the
11 policy, the insurer bears the burden of proving by a preponderance
12 of the evidence that any exclusion in the policy applies to the
13 cause of action.

14 (2) The provisions of this section shall apply to any action
15 filed on or after July 1, 2011, without regard to the date that
16 the cause of such action may have accrued.

17 SECTION 2. This act shall take effect and be in force from
18 and after July 1, 2011.

ja