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Insurer must pay \$8.1 million

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Jury rules against QBE in condo dispute

WEST PALM BEACH – In what was described as a victory for condo owners who are battling their insurers, a federal jury on Wednesday found that QBE Insurance acted in bad faith and ordered the company to pay a Boca Raton condominium \$8.1 million for damage it sustained in Hurricane Wilma.

Although less than the \$12.1 million Chalfonte Condominium was seeking, the verdict ultimately could pave the way for the owners of the 378 units in the oceanfront twin towers to recover more than \$30 million from the insurance giant, said Chalfonte's attorney, Daniel Rosenbaum.

In agreeing that the insurance company acted in bad faith when it said the condo's hurricane damage didn't even meet its deductible, the jury set the stage for a second trial in which the state's biggest condo insurer could be ordered to pay three times the initial award.

Further, in a finding that will force U.S. District Court Judge Donald Middlebrooks to plow new legal ground, the jury found that a provision of QBE's policy didn't comply with state law.

Florida law is specific about how an insurance company must alert policyholders that their hurricane deductible is different from that for their general

coverage. The law not only dictates what words must be used but also the size of the type.

In the case of QBE, the jury found that the words were different and the type was smaller than state law allows.

It is unclear exactly what Middlebrooks' options are to remedy the apparent error, Rosenbaum said. But he said he would ask the judge to order QBE to refund Chalfonte's \$1.6 million deductible.

"This is a huge case in terms of its importance in all the cases where the insurers are wearing people down through the legal process," Rosenbaum said. "I think the message to QBE is that they cannot treat the insured that way. They can't beat them down and beat them down."

William Berk, a Miami attorney who represents QBE, pointed out that the jury verdict was nearly \$4 million less than Chalfonte was seeking.

In addition, Chalfonte's \$1.6 million deductible will be subtracted from the jury award.

Further, he said in an e-mail message, the policy language that the jury found violated state law was approved by the Florida Department of Insurance.

Rosenbaum countered that QBE also will have

to pay about \$1 million in interest that has accumulated since Chalfonte filed its claim.

The owners also are automatically entitled to recover the roughly \$500,000 they spent on attorneys and other costs to battle QBE in court, he said.

The jury's decision came after about five hours of deliberation at the conclusion of a seven-day trial.

QBE maintained that Chalfonte exaggerated its damages, using the estimated 110 mph winds of the October 2005 storm as an excuse to unnecessarily replace windows and sliding glass doors that sustained no damage.

Although experts hired by Chalfonte said the frames and glass in more than half of the windows and 80 percent of the sliding doors had to be replaced, QBE experts countered that fewer than three dozen needed replacement.

One of their experts, adjustor John Wareham, admitted during the trial that he had been convicted of insurance fraud 20 years ago and lied to state regulators about it.

Chalfonte spent roughly \$13 million on repairs. When QBE finally adjusted the claim in March, it found the condo sustained \$460,000 in damage.

Since the record hur-

ricane seasons of 2004 and 2005, QBE has been a defendant in lawsuits that have claimed it both denied and delayed payments to its insured.

It provides coverage to 1,800 condominiums in Florida with a combined insured value of \$33 billion – more than any other state insurer, records show.

An Australian-based company, it does business in the state through Florida Intracoastal Underwriters.

QBE already had come under fire from the beleaguered owners of the 1515 Tower in West Palm Beach, which was hammered by Hurricanes Frances and Jeanne in 2004. After it denied coverage for the nearly \$20 million in damage claimed by the owners of the 30-story tower along the Intracoastal Waterway, the condominium filed suit.

However, when a mock jury found that condominium residents had blamed the hurricanes for pre-existing damage, residents decided to settle the suit for \$2.25 million.

The company, which reported a 56 percent increase in net profit in the six months ending June 30, faces about two dozen lawsuits in South Florida. Rosenbaum said he has about 10 pending cases.

Chalfonte is still a QBE customer. Now, however, instead of paying about \$331,000 annually for coverage, it pays \$1.3 million.