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Judge Awards \$28.2 Mil. To Insurance Companies

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Of the Legal Staff

A federal judge has awarded more than \$28.2 million to a group of insurance companies that were forced to cover extensive damage caused by Tropical Storm Allison in June 2001 when the Sandy Run Creek overflowed and flooded several corporate offices in Whitemarsh Township.

In three separate lawsuits that were tried jointly, the insurers blamed a housing developer and a contractor for causing excessive water run-off that made the flood more severe. The case is *St. Paul Fire & Marine Insurance Co. v. Nolen Group Inc.*

In a bifurcated trial, a jury heard 10 days of testimony and arguments in July 2005 and handed up a verdict on liability in favor of all four insurers.

For the damages phase of the trial, U.S. District Judge Gene E.K. Pratter appointed attorney Robert A. Prentice to serve as a special master.

Prentice later issued a 90-page report that calculated the damages owed to each insurer.

Now Pratter has handed down a 14-page opinion in which she adopted most of Prentice's findings, but imposed slight reductions on the awards.

Pratter awarded more than \$20.9 million to Zurich-American Insurance Co.; more than \$5.5 million to St. Paul Fire & Marine Insurance Co.; more than \$1.6 million to Federal Insurance Co.; and \$124,209 to Great Northern Insurance Co.

The total judgment against the sole remaining defendants - Warren W. Baringer Jr. and Baringer Land Clearers - is \$28,265,176.

Attorneys Thomas J. Duffy and Patrick J. Keenan of Duffy & Keenan, who represented Zurich-American and St. Paul, said the judgment is likely to swell to more than \$32 mil-

lion when delay damages are added.

The other two plaintiffs - Federal Insurance and Great Northern - were represented by attorney Peter G. Rossi of Cozen O'Connor.

Although Baringer is jointly and severally liable for the entire verdict, it is expected to seek a molding of the judgment to account for a \$20 million settlement paid by the lead defendants, The Nolen Group Inc. and its affiliated companies - Michael Anthony Homes Inc. and Garrison Greene Associates - and Brubacher Excavating Inc., after the liability verdict.

In the three consolidated suits, the insurers were standing in the shoes of their insureds - NCO Group Inc. and NCO Financial Systems Inc.; Teleflex Inc.; HRPT Properties Trust; HUB LLC; M&P Partners; REIT Management and Research; and BISYS Group Inc.

The jury, in its liability verdict, found that The Nolen Group was 97 percent responsible for the flooding. It also found that Brubacher Excavating was 2 percent responsible, and that Baringer and his company were 1 percent responsible.

The suits alleged that the developer had caused the flooding by radically altering the water run-off in the area when it cleared brush and trees from a 19.5 acre site where it was building two- and three-bedroom townhouses.

According to court papers, Nolen was required under its building permit to construct of a "detention basin" before any significant clearing took place.

Baringer and Brubacher were hired by one of the Nolen companies as a subcontractors to clear an 11-acre portion of the site, according to court papers.

In November 2000, Baringer's company cut down all of the trees, the suits alleged, despite the fact that Brubacher had not yet constructed the detention basins.

The insurers complained in the suit that



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Brubacher "did not begin any work on the detention basin until June 11, 2001 - about 11 weeks after the site had been entirely cleared."

Brubacher's excuse for the delay, the suits said, was that an above-ground sanitary pipe had to be removed from

the basin area before work could begin.

But the insurers argued in court papers that "Brubacher was also responsible for removing the sanitary pipe, and it delayed that two day job until May 15, 2001 . . . about five weeks after it signed the subcontract."

In their pretrial memo, Duffy and Keenan said: "Brubacher's actions were too little, too late, and the site did not have a functioning detention basin when the storm occurred on June 16, 2001."

They also blamed Nolen, saying "long before the storm, the defendants were made aware of the serious deficiencies," and cited a January 2001 report from a Montgomery County investigator that said: "Entire site has been cleared . . . No erosion and sediment controls have been installed."

A hydrology expert who testified for the insurers told the jury that uncontrolled runoff from the housing development site flowed to a railroad abutment and caused the collapse of the Fort Washington Bridge, which, in turn, caused the flooding in the nearby office complex.

(Copies of the 14-page opinion in St. Paul Fire & Marine Insurance Co. v. Nolen Group Inc., PICS No. 06-1167, are available from The Legal Intelligencer. Please call the Pennsylvania Instant Case Service at 800-276-PICS to order or for information. Some cases are not available until 1 p.m.)