

Friday, September 19, 2008

Insurance lawsuit highlights risks in older buildings

South Florida Business Journal - by [Paul Brinkmann](#)



Mark Freerks

Buckley Towers board members Oded Amir and Mickey Simon are fighting with insurer QBE over damage caused by Hurricane Wilma.

Winning a \$20 million lawsuit over hurricane insurance coverage may be the last hope for 564 unit owners at aging Buckley Towers in North Miami Beach.

The building faces possible condemnation because of water damage, mildew, utility problems and roof and structural damage. The lawsuit is the latest in a string of federal suits against global condo insurer **QBE Insurance**. It also highlights the plight of some older buildings in Miami-Dade County as they near their 40-year anniversary under the county's recertification program.

The program requires that commercial and condominium buildings undergo a rigorous re-inspection for safety. A Miami-Dade County Building Department official said it has issued 890 notices of recertification and 428 notices of violation under the program. Sometimes more than one violation is issued for a certain case.

Recertification for Buckley Towers is crucial, but might not happen soon enough, according to the county. The condo's board and its attorney, Dan Rosenbaum, say QBE owes Buckley Towers more than \$18 million for damages from Hurricane Wilma. But, the insurer said in a written answer in court that Buckley Towers failed to comply with efforts to investigate damages at the building, and many problems are due to "wear and tear."

On Sept. 23, the building faces a county deadline to submit its 40-year reinspection report. Buckley Towers' lawsuit against QBE is not set to go to trial until November.

Without the report showing compliance with county codes, "within a matter of weeks, we will post the building unsafe. It will be condemned," said Charles Danger, director of the Miami-Dade County Building Department.

Rosenbaum, who already has won a \$8.14 million judgment against QBE at Chalfonte Condominium in Boca Raton last year, said the Buckley case is far more dire.

“The people at Chalfonte were able to make repairs themselves and then argue over money,” said Rosenbaum, a partner in the West Palm Beach office of Katzman Garfinkel. “The people at Buckley Towers are not so fortunate. Many are retirees on fixed incomes.”

Buckley Towers are two Y-shaped buildings, a popular style in the late '60s and '70s. That configuration caught Hurricane Wilma's winds for a sustained period on Oct. 24, 2005. Rosenbaum is presenting radar images that he says show the North Miami area was especially hard hit by Wilma's wrath. He said the towers actually racked or twisted slightly in 105 mph sustained winds, causing structural joints to loosen.

The building had paid a premium of \$202,896 for a 12-month policy.

“The adjuster did the report right away, but QBE never responded,” said Mickey Simon, Buckley Towers' treasurer who has lived on its 11th floor for 17 years.

The condo, which has an annual budget of more than \$2 million, is also struggling with foreclosures. It recently received a \$1.2 million loan from the **U.S. Small Business Administration** to pursue the most needed repairs. A special assessment of \$1.49 million last year did not address major needs, and some residents are still struggling to pay it. An assessment to cover all the damages to the building would cost about \$8,000 to \$10,000 per unit.

QBE and its South Florida attorneys did not respond to requests for detailed comment. According to the answer the company filed to the lawsuit, “some of the plaintiff's alleged damages would be excluded ... for wear and tear, decay, deterioration and the like” and for “rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in the property that causes it to damage or destroy itself.”

More aging buildings

Miami-Dade County's 40-year recertification program for commercial and condo buildings started in 1974, after the tragic collapse of the federal **Drug Enforcement Agency** offices in downtown Miami killed seven people.

The program was revised in 2001 to include electrical inspections; parking garages are also included now. Each municipality handles its own inspections. Danger's office handles unincorporated areas.

As Florida's building boom years mature, the number of buildings in the program goes up. In the fiscal year just ended, Danger's office issued 890 notices of recertification and 428 notices of violation. Sometimes, more than one violation is issued for a certain case.

Many other older U.S. municipalities – including St. Louis and Broward County – have started similar programs.

Danger was not pleased to learn that Rosenbaum and his engineers are making a case that the building could be unsafe in another hurricane.

“If they have a report saying it’s not safe, they are obligated to tell the building department,” he said.

He said he doubts that Wilma’s Category 2 winds could be enough to cause significant structural damage, but acknowledged that he did not have specific information.

Danger said common problems with older buildings include deteriorating balconies and old or unsafe wiring.

Hurricane damage can be very building specific, said Wimal Suaris, an associate professor of civil and architectural engineering at the **University of Miami**.

He said Y-shaped buildings like Buckley Towers would catch more wind than a circular building, but could not speculate if that could cause more damage.

“It depends on the way a building is designed,” he said. “You really have to look at the subjective plans and calculate for each building design.”

Katzman Garfinkel is handling about 20 federal suits against QBE, all of them in Florida. The insurance company has appealed the Chalfonte ruling. Meanwhile, Rosenbaum has filed a motion to force the insurer to pay the Chalfonte damages immediately, before the appeals are exhausted.

pbrinkmann@bizjournals.com / (954) 949-7562