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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 TODD and KAREN BRANDT,

8 Plaintiffs,

9 v.

10 AMERICAN BANKERS INSURANCE
11 COMPANY OF FLORIDA,

12 Defendant.

CASE NO. C08-5760BHS

DECISION

13 **I. SUMMARY OF DECISION**

14 Todd and Karen Brandt (the “Brandts”) bring this action to recover a judgment for
15 amounts they allege are owed under their flood insurance policy, which they purchased
16 from American Bankers Insurance (“AB”). The loss amounts they claim were the result
17 of damages the Brandts suffered when flood waters of the Skookumchuck River poured
18 into their property and residence in December 2007.

19 Although coverage was generally not in dispute and AB paid for damages that it
20 concluded were the proximate result of the flood, it did not pay the full amount the
21 Brandts alleged to be due them under the policy.

22 The Court held a two-and-one-half-day trial (June 8-10, 2010) in which evidence
23 was presented by the Brandts and AB. The central, but not only, factual issues involved
24 the questions of whether or not the house shifted on the foundation as a result of the 2007
25 flood and whether the house, apart from the attached garage, suffered any damage that
26 required repair for which AB was required under the policy to compensate the Brandts.
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1 seen in the non-garage portion of the house during or after the flood. Indeed, Karen
2 Brandt expressed relief that it had not. The Court finds that it is likely that the flood level
3 did not rise enough to produce water on the floor of the non-garage portion of the house,
4 but that it is also likely that water sloshed around in the crawl space sufficiently to cause
5 some parts of the car decking to become wet and conceivably saturated in places. This, in
6 turn, could have caused the floor coverings to be wet in places, but there was insufficient
7 evidence to conclude that there was water throughout the house on or in the floor
8 coverings.

9 Although there was moisture found in the carpet and a high moisture content
10 measured in the car decking months after the flood had subsided, that did not likely result
11 from the December 2007 flood. There was ample time for that moisture to dissipate. More
12 likely, it is the result of a combination of factors. These factors include the moisture from
13 the dirt floor within the foundation resulting from the removal of moisture (or vapor)
14 barrier after the flood and the lack of any subfloor insulation which customarily provides
15 an additional moisture barrier. Another source of moisture was likely the roof leaks and
16 an inadequate gutter-to-eave installation. An interior plumbing leak in the master
17 bedroom bathroom could also have been a contributing factor.

18 The Court finds that the house did not move on its foundation as a result of the
19 flood. Moreover, it is unlikely that the flood caused any of the anomalies discovered in
20 the house by the Brandts following the flood or as observed by other expert witnesses.
21 The testimony of Edwin Huston, a structural engineer, was compelling in support of his
22 conclusion that the house was unmoved by the flood waters. This conclusion is based on a
23 combination of (1) evidence of paint which was applied before the flood that was
24 continuous and uninterrupted over the surface where the siding and foundation interface;
25 (2) the lack of any evidence of movement of trim adjacent to the sliding door of the
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1 bedroom; and (3) the lack of any evidence of movement of the post supporting the house
2 floor and steel plates affixed to the post.

3 Additionally, Mr. Huston demonstrated that the leaning columns which had been
4 painted before the flood showed no sign of movement either at the top or bottom.

5 Moreover, it is clear that the house had experienced at least one other significant flood
6 event, as well as the Nisqually earthquake, which could have caused the observed
7 anomalies in the columns and siding. In fact, there was no explanation offered for the
8 removal and replacement of the bottom nine inches of siding other than a prior flood
9 event. Another plausible and perhaps more likely theory is that some of these anomalies
10 are actually traceable to the original construction of the house.

11 One of the somewhat perplexing aspects of the evidence produced at trial was the
12 observed post-flood presence of cracks in the interior walls of the house. Karen Brandt
13 noticed several wall cracks after the flood. Some cracks were also observed by Scott
14 Cook, a home inspector, although he was not familiar with the house prior to the flood
15 and could not offer testimony as to its pre-flood condition. Mr. Huston offered the
16 explanation that interior cracks on walls are the common result of shrinkage and settling.
17 This testimony, however, does not address the observations of Karen Brandt that these
18 cracks had not been seen before the flood. The Court finds that Karen Brandt testified
19 from her best recollection, but concludes that the cracking of interior walls preceded the
20 flood. Her inspection or powers of observation of the wall condition, like the leaning
21 columns and the exterior wall, may have been more keen after the flood event than before
22 – a perfectly natural and common phenomenon. It is the weight of the other physical
23 evidence previously discussed that leads the Court to its conclusion on this issue as well.

24 Because the Court finds that there was no damage to the interior of the house
25 resulting from the flood that needed repair, the issue relating to the requirement of the
26 building code of the City of Centralia that the house be raised is moot. Such a raising
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1 requirement is only applicable if the house had suffered damage amounting to more than
2 50% of its value. Clearly, the cost of the damage to the garage, which was determined to
3 be \$37,715.92 and has already been paid, does not begin to approach one-half the value of
4 the house.

5 AB raised the uncontested defense that no further compensation is required under
6 the policy of insurance because the Brandts cannot recover replacement costs after the
7 time in which the repairs needed to be made under the terms of that coverage has expired.
8 Therefore, the only other potentially available coverage under the policy is the payment
9 of actual cash value (which is defined in the policy as replacement costs less
10 depreciation). Because no evidence was offered as to depreciation, AB argues that no
11 further payments under the policy are payable.

12 Since the Court has determined that there was no damage to the house proximately
13 caused by the 2007 flood, that has not already been paid for by AB, this issue is moot.

14 III. CONCLUSION

15 AB did not breach its contract of insurance with the Brandts and therefore no
16 money is due them.

17 AB is instructed to submit proposed findings of fact and conclusions of law
18 consistent with this decision on or before June 30, 2010. The Brandts may file their
19 objections and proposed findings of fact and conclusions of law consistent with this
20 decision on or before July 9, 2010.

21 DATED this 21st day of June, 2010.

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25 BENJAMIN H. SETTLE
26 United States District Judge
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