President Bush has promised to rebuild the Gulf Coast "higher and better" than before. But that task is going to be far more difficult if Mississippi Attorney General Jim Hood and his tort lawyer pals succeed in rewriting private insurance contracts after the hurricanes have hit.

For decades private insurers have had flood exclusions in their contracts -- which is one reason the federal government decided to offer its own flood insurance. Yet Mr. Hood now says these exclusions are "unconscionable," and he is suing private insurers to cover all of Katrina's costs. Hot on his heels is tort kingpin Dickie Scruggs, whose own home was damaged and who promises to sue the industry for what he claims are deceptive business practices.

Wading through this muddled thinking takes some effort, but the first thing to understand is why insurers have flood exclusions. The simple reason is that floods are not a typical insurable risk. The entire point of insurance is to spread risk by collecting premiums from a large group of people who pay into a pool, which is then used to compensate the relatively few who suffer accidents. Floods don't work that way. The only people who buy flood insurance are those who are very likely to be flooded, making it impossible to spread risk. Floods also tend to wipe out entire regions, causing extraordinary losses. And they often result in repeat losses, because people rebuild in flood-prone areas.

Flood insurance has instead been offered by the federal government for 37 years, and FEMA, which administers the National Flood Insurance Program, spends millions of dollars annually to promote this coverage in the Gulf Coast and other areas. It's true that few Mississippians actually bought this flood insurance -- which explains Mr. Hood's populist suit -- but that was because either they didn't bother or didn't want to spend the money because they assumed the feds would bail them out anyway if disaster struck. It was not because the public didn't realize they weren't covered by their private policies, which practically scream about the exclusion on the declaration page.

Private insurers do cover wind damage, however. Hurricanes therefore always result in wrangling over how much damage was caused by wind versus water. Adjustors often assign a portion of the damage to the private policy, and a portion to the government program. But what has never been in doubt is that insurers are not required to pay flood costs, their contractual flood exclusions have been approved by state regulators and upheld by courts everywhere.
Mr. Hood, a Democrat who fancies himself the Eliot Spitzer of the South, understands all this. Yet he is twisting facts and arguing that, exclusions notwithstanding, residents believed they were buying comprehensive hurricane insurance and that private insurers therefore have a duty to cover all Katrina damages. Even assuming this confusion existed, Mr. Hood is basically holding insurers responsible for Mississippians who didn't bother to read contracts they signed.

Mr. Scruggs's claim is even more disingenuous. As only a lawyer can, he's arguing that since the wind pushed the water during the hurricane, the flooding was in fact wind damage. This should be a legal nonstarter, given that most contracts exclude rising water no matter what the cause or circumstance.

Both men are demanding that private insurers pay for Katrina flood damage, though the companies never collected one dime of flood premiums over the years and have no such reserves. As it is, insurers may be on the hook for $60 billion. Sticking them with flood damage could add another $15 billion to the tab, which would certainly send several insurers into bankruptcy.

Insurance companies that survived would have to assume that flood liabilities are now theirs to pay, regardless of the contracts they write. They'd then have to charge everyone in the region higher premiums -- by one estimate, as much as $500 a year -- to cover this flood risk. Or they could take the more rational option of fleeing a state where contracts aren't worth the paper they're written on.

In other words, Mr. Hood is guaranteeing that victims of the next hurricane will have even less financial protection than Katrina's. And he's complicating the entire reconstruction effort by raising the cost of insurance for the contractors, union workers, homeowners and businesses that are all going to need liability and/or property and casualty insurance before they rebuild. The attorney general is a Category 5 destructive force all by himself.

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