

Allstate accused of cheating claimants

LOCAL CLAIM COULD LEAD TO \$800 MILLION CLASS ACTION

By Brandon Ortiz, HERALD-LEADER STAFF WRITER

It started as a minor rear-end wreck.

A large truck, loaded with firewood, ran into a Dodge Dakota stuck in traffic on Man o' War Boulevard in Lexington, scratching the pickup's bumper and bending its frame.

That 1997 accident could spawn an \$800 million class-action lawsuit brought by a Richmond woman against Allstate Insurance Co.

Geneva Hager, 59, is portrayed in two starkly different lights. To her lawyers, she is fighting a David vs. Goliath battle against a powerful insurance company, which is taking money from the pockets of injury victims. To Allstate's lawyers, she is being used as a pawn by greedy trial lawyers, who are looking to get rich at policyholders' expense.

Hager's tale is rich with subplots: the Lexington claims adjuster who shot herself to death at her office desk; depositions given by former high-ranking Allstate executives in Kentucky; thousands of pages of secret documents kept under court seal.

Trial lawyers see Hager as the victim of an illegal scheme by insurance executives to bully car accident victims -- particularly the poor, the elderly and the disabled -- into accepting unfair compensation for their pain and suffering.

As they see it, Hager's story is part of the untold tale of how a consulting company with close ties to Enron, the disgraced energy company, radically altered claims-handling in a way that threatens to undermine the American middle class' safety net:

insurance.

The lawsuit alleges that Allstate forces claimants to accept low-ball offers or face years of stressful, costly litigation. The strategy allows the Illinois-based company to "exert its tremendous financial superiority" over injury victims, said David Berardinelli, a lawyer in Santa Fe, N.M., who is pursuing a similar class action there.

"Wearing them out, wearing them down through intractable, no-holds-barred litigation," Berardinelli said. "For this company, you can get prompt payment if you're willing to accept 65 cents on the dollar. Or you can get fair payment if you're willing to endure years of intractable litigation and the cost and the grief that goes along with that.

"It's prompt or fair treatment, but not both."

Allstate's lawyers say the company is simply trying to root out fraud, which they say upsets trial lawyers who once viewed minor car accidents as a quick payout. The insurance company also said it examines each claim on its merits and offers fair payments.

At the heart of the Hager suit, and similar battles against Allstate around the country, are 12,500 pages of documents that trial lawyers say lay out a blueprint for nationwide fraud.

Known as the McKinsey documents, they are actually slide shows produced by international consulting firm McKinsey & Co., which Allstate hired in the early 1990s to redesign the way it handles claims.

Former Enron President Jeff

Skilling was a McKinsey alumnus and former partner. Business Week has called Minsey, which consulted with Enron for two decades, "a key architect that made Enron a Wall Street darling."

McKinsey officials declined to comment for this article.

Allstate has fought to keep the documents from the public -- even admittedly defying a New Mexico court order to release them -- though their existence has been the subject of a recent book and articles in publications such as Business Week and the Chicago Tribune.

Portions of the McKinsey documents have been shown at least twice in open court -- once in Geneva Hager's case last year, when her attorneys asked Circuit Judge Thomas Clark to give her lawsuit class certification. Those files are now sealed in Lexington as well.

If allowed to proceed, Hager's suit could include thousands of Kentuckians who suffered soft-tissue injuries in wrecks with minor property damage.

Clark is expected to rule any day.

Stalling tactics alleged

It took two years for Geneva Hager, a passenger in the Dakota, to resolve her claim for \$25,000 for neck and back injuries with Allstate, which insured truck driver Thomas J. Lapointe Jr. The company did not make a formal offer until four days after Hager's case was scheduled for trial.

Hager's story is too common, her attorney Paul Kaplan said.

Kaplan warned Hager to prepare for a long fight the day he met her. It's what he tells all clients who have insurance claims with Allstate.

For years, Kaplan thought delays were the unintended consequence of the company defending too many claims. Only after Hager sued Allstate for allegedly handling her claim in bad faith did Kaplan realize it was "trying to maximize its financial benefit by dragging its feet," he said.

Allstate's procedures were implemented in 1995 and are called Core Claim Process Redesign. CCPR, the brainchild of McKinsey & Co., classifies claims based on several factors, such as attorney representation, soft tissue injuries or whether it's the subject of litigation.

What stands to become the most famous of the McKinsey slides is one stating that injury victims who do not hire lawyers could get "good hands" treatment. The 10 percent who hire lawyers, however, get the "boxing gloves" and could take as long as four years to resolve their claim.

The slide was shown in court during the Hager case last year.

The first step of CCPR, trial lawyers say, is to discourage claimants from hiring an attorney. Trial lawyers say those who do hire attorneys are subject to invasive requests for medical records, needless examinations and endless requests for documents.

Reading from a script, claims representatives act empathetic and try to build rapport with unrepresented claimants, said Linda Brown, who in the mid-1990s was a high-ranking Allstate official in Kentucky -- and who has provided testimony in court cases, including Hager's. Brown, who spoke to the Herald-Leader, supervised adjusters and approved offers.

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After investigating a claim, adjusters would run it through a computer program called Colossus, which produces a range of settlement values that adjusters rarely could exceed, Brown said.

But the ranges were often undervalued because the results relied too heavily on medical treatment, Brown said in affidavits and in the interview. It was poor at factoring in such human elements as pain and suffering.

On top of that, the program was "tuned" to produce lower values more to Allstate's liking, Brown said. The company also left jury verdicts -- which typically are higher than settlements -- out of the database, skewing the results, she said in an affidavit.

Colossus is the subject of numerous lawsuits against Allstate and other insurance companies. The industry has said the program is just a tool that guides decisions on settlements. Allstate has denied rigging Colossus.

Claims representatives were under tremendous pressure to settle cases quickly and prevent claimants from hiring attorneys, Brown said.

Allstate fired Brown in 1999, citing poor performance and alleged alcohol problems in court documents. She said she was fired because she had complained about the company's claims-handling. Brown, a 12-year employee, filed a wrongful-termination suit against Allstate, but a judge dismissed it in November 2002, after Brown missed numerous depositions, citing medical problems.

Attorney J. Dale Golden, who also represents Hager, said in court that Allstate tied adjusters' compensation to how well they limited claim payments.

Staff were rewarded with trips

to resorts and huge bonuses, according to a pleading filed by Lexington trial lawyer Austin Mehr in a Scott County lawsuit against Allstate. At one point, claim payments were an explicit part of employee evaluations.

The McKinsey slides call for adjusters not to re-evaluate their initial offer without a material change in facts. "Stand firm on final offer with no real negotiation," one slide states, according to notes Berardinelli made on the documents. Those notes are now part of the court record in his class-action case in New Mexico.

Minor-impact-soft-tissue claims were targeted for more scrutiny. Insurance experts say soft-tissue claims are the most likely to be fraudulent. Brown said that Allstate arbitrarily capped MIST claims at \$2,500, an accusation the company vigorously denies. Debbie Niemer, a former regional casualty manager, has testified that adjusters are trained to assume minor wrecks can't cause significant injuries, Hager's lawyers said in court.

The adjusters also made exhaustive searches for pre-existing injuries, Brown said. She said the company was fishing for excuses not to pay. If a claimant had injured his back two years earlier, for example, adjusters used that to claim he was faking pain or exaggerating the injury, Brown said.

MIST claims typically involve less than \$1,000 in property damage, Hager's attorneys have said in court. Since property damage is minimal, Allstate believes it can take such cases to juries and accuse the claimant of lying, Golden said.

The McKinsey documents and CCPR manuals do not

explicitly call for needless litigation or fishing for excuses, Berardinelli said. He said it's the totality of the slides that tell the story: the boxing gloves, a slide calling for "aggressive" litigation tactics and another describing claims handling as a "zero sum economic game" in which "Allstate gains -- Others must lose."

"If that isn't explicit enough for you -- the intent behind the protocols -- I don't know what is," he said.

Claims process upheld

Allstate's lawyers dispute criticism of CCPR, contending it's a legitimate way of rooting out fraud and discouraging opportunists. The insurance company examines each claim on its merits and offers fair payments, its attorneys said.

Any delay with Hager's claim is the fault of Kaplan, Allstate's attorneys have argued. They say he refused to allow them to obtain her previous medical records, including those from a workers' compensation claim for a back injury in the early 1990s.

The company also points to a doctor's evaluation that concluded Hager was exaggerating the pain from her injuries.

Once her records were received, Allstate promptly paid the \$25,000 policy limits to Hager's claim, the company said.

Kaplan said Allstate was provided with all the records necessary to process her claim by at least May 1998.

Allstate said several state insurance commissions, including Kentucky's, have found its claims-handling procedures in compliance with laws governing claims-settlement practices.

But the Kentucky Office of

Insurance reviewed only 10 MIST claims filed from 1995 to 1998 -- too small a sample to definitively speak "to Allstate's claims practices regarding minor-impact claims," communications director Ronda Sloan said.

Some industry-watchers are skeptical of the trial lawyers' claims.

It's ridiculous to think such a massive company could carry out systematic fraud without the public catching wind of it, said Brian Sullivan, editor of Auto Insurance Report, a weekly trade newsletter.

Minor-impact collisions are far more likely to have fraudulent injury claims than any other type of accident, Sullivan said. That justifies increased scrutiny.

Insurance fraud proliferated in the early 1990s because insurers were too quick to fold on small claims, providing steady work for ambulance-chasing lawyers and driving up premiums, Sullivan said.

Trial lawyers think companies play hardball if they don't immediately dole out cash, Sullivan said.

"When Allstate says, 'We are going to crack down on the honeypot,' the trial lawyers get mad," he said.

Allstate's lawyers have said Hager and her attorneys are motivated by greed.

"Their claim for injunctive relief is just a setup to get the money," attorney Mindy Barfield said last year.

Indeed, the suit could turn the couple who ran a Madison County pest control business into multimillionaires. Lawyers want \$6 million for Hager alone.

In addition to Kaplan, Hager is represented by two big-name lawyers: Golden of Lexington, and Ronald Parry of Covington.

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In 2004, Golden won a \$28 million jury verdict against Cincinnati Insurance Co., which was accused of delaying an insurance payment for a Scott County man and misrepresenting the amount of coverage available. The case is on appeal.

Robert Altman, an Atlanta attorney, said he's spoken to Hager's attorneys about filing a class-action suit in Georgia, raising the question of whether they are considering lawsuits in other states.

Kaplan declined to comment.

As Allstate is quick to note, its claims process has been upheld in courts across the nation. It pointed to eight decisions and one jury verdict in particular.

"Allstate believes that these court decisions, rendered after challenges to CCPR were litigated on the merits, are more telling than unfounded and unproven accusations," Allstate officials said in a written statement.

Hager's case, in contrast to many lawsuits challenging CCPR, attacks only how Allstate handles soft-tissue claims.

Only two class-action lawsuits challenging Allstate's claims-handling have been allowed to proceed in other states, the company said. No lawsuit has been certified at the national level.

But Kaplan said the McKinsey documents could turn the tide in the Kentucky case.

'Good hands' and 'boxing gloves'

In 1992, Allstate hired McKinsey to redesign its claims-handling procedures. During a five-year period, McKinsey teams made PowerPoint presentations on the findings and progress of the project to management, Berardinelli said.

The resulting slide shows have been obtained by attorneys in several cases under protective orders. They have been introduced as evidence in at least one bad-faith insurance lawsuit, which resulted in a hung jury, said Montana attorney Rick Anderson, who represented the plaintiff.

A federal judge returned the documents to Allstate after the February trial in that case, making them no longer publicly available. The case was settled confidentially, Anderson said.

In New Mexico, Berardinelli obtained the documents in a bad-faith lawsuit, but, unlike other plaintiffs' attorneys, he refused to consent to a protective order.

A Santa Fe judge ruled the documents are not confidential trade secrets, as Allstate contends, but ordered Berardinelli to treat them as such while the insurer appealed that ruling.

Berardinelli hired paralegals to take notes on the materials, which had stripes marked "confidential" that prevented them from being photocopied. In all, Berardinelli and his staff made 300 pages of notes, which were filed in the Santa Fe court.

After the New Mexico Supreme Court denied Allstate's two-year appeal, Berardinelli returned the McKinsey documents, expecting to receive clean copies that could be duplicated.

Allstate balked, forcing the judge to take the rare step of entering a default judgment finding the insurance company liable, a ruling that is now under appeal.

In Hager's case, Judge Clark ruled in 2001 that the documents are not trade secrets. Allstate immediately asked him to reconsider. Kaplan said he agreed to treat the McKinsey documents as confidential until trial to keep his case moving along.

Berardinelli parlayed his notes into a book, *From Good Hands to Boxing Gloves*, which sells to lawyers for \$295.

In great detail, the slides show how shareholders could profit from the new way of handling claims, according to Berardinelli's notes. Based on public financial reports, Berardinelli estimates that Allstate has made at least \$15 billion from CCPR by fighting minor claims, which make up the bulk of payouts.

The company called the allegation outrageous.

Berardinelli likens it to a factory that underfills every can of peas. Customers buy a can expecting to get 10 ounces of peas, but only get 8.

That's not how insurance is supposed to work, Berardinelli said. Insurance companies are legally and ethically required to make a fair offer, without regard to the bottom line.

Allstate turns that concept on its head, turning claims-handling into a profit center, he said. And trial lawyers say other insurance companies have adopted similar hardball tactics.

"The ethics of insurance is that you're supposed to pay a claim fairly," said Altman, the Atlanta attorney. "McKinsey & Company went into all these companies and said, 'You guys are being fooled because claims are an area where you can make a profit.'"

