

## 'I felt like we were being unfair' State Farm stand stuns adjuster

By ANITA LEE, SUN HERALD

BAY ST. LOUIS - Wesley and Rosemary McFarland's insurance policy with State Farm Fire & Casualty Co. represented something priceless to them: Peace of mind.

McFarland, a physician who lives with his family on North Beach Boulevard in Bay St. Louis, has ridden out every hurricane on the Coast since 1947. He knows what they can do.

So his home was insured to the limit through the National Flood Insurance Program. His State Farm policy provided an additional \$800,000-plus in coverage for wind damage. No worries, his State Farm agent said.

"We agreed nothing could happen (to the house) in a hurricane that I wasn't covered for," said McFarland, who prides himself on keeping his family's affairs and paperwork in order.

The 83-year-old was in for a rude awakening after Hurricane Katrina.

State Farm said the loss of his family's home would not be covered because storm surge caused the damage. The company maintains it has treated policyholders fairly on the Coast and can't be expected to cover losses for which no premiums were collected.

"I damn near fainted," McFarland said in an interview in his FEMA trailer,

which sits on the waterfront lot where his house once stood. "I knew we were going to have to negotiate it. You have to negotiate with all insurance problems."

Rosemary McFarland, 79, took the news hard.

"She cried like a baby," McFarland said. "I said, 'Mama, look, we're gonna make it. We've got enough. We have retirement and IRAs. We're gonna be all right. We just don't have a home anymore. And we'll cross that bridge when we come to it.'"

McFarland said their house sat 19 feet above sea level and the surge in his area was measured at 22 feet.

A provision in State Farm's policy, the company has maintained, means no insurance for wind when water contributes to the damage. A federal judge has since ruled the language is ambiguous and cannot be enforced, but State Farm is appealing the decision.

The \$350,000 the McFarlands received in flood insurance was not even half of what they would need to restore their lives.

McFarland, who worked for nine days after the hurricane to provide medical assistance in Hancock County, gathered evidence to prove his case to State Farm. Weather reports, tornado warnings issued in Hancock County, photos showing how his home and

contents had been scattered in every direction, trees twisted off 50 feet in the air and other documents would prove his case: Tornado winds blew apart the house before the storm surge arrived.

The McFarlands were among the first families to attend state-sponsored mediation with their insurer. Under the program, an objective third party, a mediator, meets with policyholders and insurers to help them reach an agreement on damages.

Kerri Rigsby, an adjuster who worked on State Farm's mediation team, remembers the McFarlands well. She was impressed by the stack of evidence they brought to the table.

It didn't help them, though.

McFarland was shocked that his "master's thesis" on the storm failed to make an impression on State Farm's team. He and a daughter who accompanied the couple remember Rigsby's face as hard and cold as stone.

Beneath the mask, she was in fact deeply troubled by the experience.

She doesn't recall State Farm offering the McFarlands a dime in mediation, but they say the mediator expressed embarrassment when relaying a State Farm offer of \$50,000 to settle their claim.

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## BEING UNFAIR...

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"Of course, Mrs. McFarland cried," Rigsby later recalled. "I remember Mr. McFarland's last words to me were, 'You do a great job of holding onto State Farm's money.' And it upset me.

"That case upset me so badly because I felt like we were being unfair. We hadn't had an engineer report" to assess the cause of the McFarlands' damage.

"We were basically saying, 'Because you lived on the water, you had no wind damage. It was all water. We're not going to even look at all the evidence that you've gathered for us to look at. We're just going to say no and force you to sue us and we don't think you will because you're elderly' is basically what I think my boss was thinking.

"It's like the hurricane took their home," said Rigsby, who was employed by a private adjusting firm working for State Farm. But "the insurance companies are just sucking the life right out of them."

Because of privacy laws and pending litigation, State Farm is unable to talk about the McFarlands' case.

Rigsby discussed the mediation with a relative, who said it was time to call Richard "Dickie" Scruggs, an attorney and family friend known far and wide for his legal abilities.

Rigsby did just that, eventually leaving her job to join Scruggs' law firm, which has filed suit on behalf of thousands of Hurricane Katrina policyholders suing their insurance companies.

The McFarlands had been staying in Baton Rouge, but eventually returned to their property to live in the FEMA trailer. They were still very much in love. Wesley McFarland said it was hard to look at his wife without smiling. They had shared many adventures over the years, including a five-year stint aboard cruise ships where he served as doctor.

Rosemary McFarland, who had a heart arrhythmia, worried about the future. But she also said, "Well, Daddy, at least we've got good legal representation. We've got to win this."

The McFarlands hired Scruggs to represent them.

On June 14, they talked for three or four hours, covering all sorts of subjects, on the trailer's wooden deck overlooking the Bay of St. Louis. Then they retired indoors and Rosemary McFarland went into the bathroom to cleanse her face before bed.

"She fell right back there," McFarland said, pointing to the bathroom, "And June 15th, she died."

McFarland misses his wife. Her photograph hangs over his bed, smiles up at him from his computer mouse pad and also sits on the

kitchen table.

He is not sure what he will do about another house. He is focused on the trial with State Farm, scheduled in early 2007.

"I'm going to beat the hell out of State Farm first," he said. "I want it all. I had a contract with State Farm and I paid my fee."

### How the courts see it

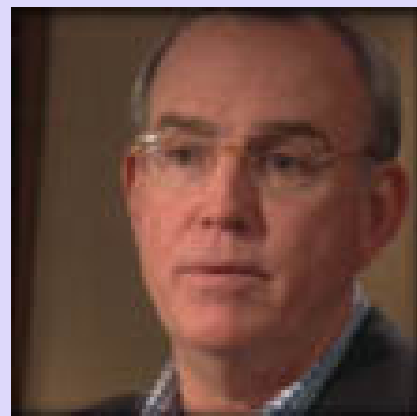
Trial and appeals courts have long recognized a basic aspect of insurance coverage, described as follows in the authoritative work "Appleman on Insurance" and quoted by the Utah Supreme Court in the case of Campbell v. State Farm Mutual Automobile Insurance Co.:

"Insureds buy financial protection and peace of mind against fortuitous losses.

"They pay the requisite premiums and put their faith and trust in their insurers to pay policy benefits promptly and fairly when the insured event occurs. Good faith and fair dealing is their expectation. It is the very essence of the insurer-insured relationship.

"In some instances, however, insurance companies refuse to pay the promised benefits when the underwritten harm occurs. When an insurer decides to delay or to deny paying benefits, the policyholder can suffer injury not only to his economic well-being but to his emotional and physical health as well.

"Moreover, the holder of a policy with low monetary limits may see his whole claim virtually wiped out by expenses if the insurance company compels him to resort to court action."



State Farm is the target of Richard "Dickie" Scruggs. State Farm has proven it regularly practices bad faith in claims handling and may have even committed criminal offenses in the process. Scruggs is about to open up a can of whoop ass on State Farm. POA