

Alabama Supreme Court opens door for toxic lawsuits

Cobb provides difference in new 5-4 majority in case that could impact thousands

By BRENDAN KIRBY, Press-Register

Overturing a long-standing precedent it had reaffirmed only last year, the Alabama Supreme Court has allowed a wrongful death lawsuit that a judge had barred on grounds that the plaintiff waited too long to file.

The 5-4 decision handed down Friday will allow Alabamians exposed to toxic chemicals after Jan. 25, 2006, to sue the manufacturers if they become ill in the future, but it will not apply to thousands of people who were last exposed before then.

"That doesn't mean we're going to stop," said Birmingham lawyer Robert Palmer, who represents the plaintiff, a widow of a Tuscaloosa man who died from a rare form of leukemia. "Denial of justice to anyone is not justice. ... It's a victory, but it's not a complete victory."

Since 1979, the high court had enforced what amounted to a Catch-22. In most cases, people who claim to have been sickened by a toxic substance had to file a lawsuit within two years of their last expo-

sure. But they also could not sue until they were sick.

Since symptoms caused by toxic chemicals often do not show up until years after the fact, the rulings effectively barred plaintiffs from seeking damages in court.

Alabama had been the only state to interpret its statute of limitations rules in that way.

Activists urging restrictions on lawsuits have argued that the state Legislature should address the issue. They also note that the statute of limitations is important because of the difficulty companies face trying to defend against alleged conduct that occurred many years ago.

"More people are potentially going to have claims now," said Mobile lawyer Matt McDonald, the general counsel of the Alabama Civil Justice Reform Committee. "Because it's not retroactive, I don't think it's going to open the floodgates, either."

In the case decided Friday, Brenda Sue Sanford Griffin

sued in 2006 on behalf of her dead husband, claiming his death was the result of exposure to benzene and other toxic substances he came in contact with on the job at a tire manufacturing plant.

David Wayne Griffin worked at the Tuscaloosa plant from 1973 to 1993. He was diagnosed with a rare disease called acute myelogenous leukemia in 2003, 10 years after his last exposure.

Following the old precedent, a Tuscaloosa County circuit judge dismissed Griffin's claims against the manufacturers of those chemicals: Unacal Corp., Radiator Specialty Co., Hunt Oil Co., TRMI Holdings and Solvents & Chemicals Inc.

In an unsigned opinion, five justices noted that the central issue is whether the 1979 precedent set by *Garrett vs. Raytheon* still applied.

"Stated simply, it is not, because we hereby overrule *Garrett* and its progeny," the majority stated.

The justices decided the new rule should apply retroactively in Griffin's case only, because the plaintiff should be rewarded for her efforts, and sent the case back to Tuscaloosa County Circuit Court for trial.

Approximately one year ago, the court upheld in a 5-4 decision in another case that the *Garrett* decision did apply. That ended attempts by Jack Cline to sue benzene manufacturers after he came down with acute myelogenous leukemia.

Since then, however, two new justices have joined the court.

Justice Glenn Murdock took the position of the man he replaced, Bernard Harwood, who wrote a dissent in last year's case. Chief Justice Sue Bell Cobb also adopted that position; her predecessor, Drayton Nabers, was in the majority last year.

State Sen. Hank Sanders, D-Selma, has offered legislation in the upcoming session that would apply the court's new standard retroactively.

ALABAMA'S COASTAL LIVING MAY NO LONGER BE AFFORDABLE

POA

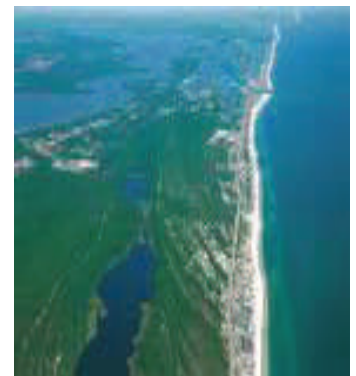
According to the National Association of Insurance Commissioners, average homeowners insurance rates in Alabama jumped by 69.1 percent between 2001 and 2005. On a national scale, this is the second-largest rise; only Minnesota, with a 70.3 percent increase, was worse.

This increase comes despite the fact that Alabamians have lower incomes and are typically insuring less expensive homes than in most other states.

Walter Bell is the Alabama Insurance Commissioner and is averse to stronger public

intervention.

According to an insurance industry consultant, "Another legacy of Hurricane Katrina is the growing realization that living on or near the coast is a luxury that not everyone can afford".



[CLICK HERE](#) for a copy of the opinion.



CA Court: Policyholders can question excessiveness of Farmers' management fees

A California Court of Appeals has allowed policyholders in the Farmers Insurance Exchanges to question alleged excessiveness of management fees charged to them by Farmers Group, Inc. ("FGI"), a wholly owned subsidiary of Zurich Financial Services.

Tuesday's ruling rejected FGI's argument that the fees had been approved by the California commissioner of insurance as part of the rate requests FGI files on behalf of the insurance exchanges it manages. The court held that FGI and its subsidiaries owe a fiduciary duty to the Exchanges' policyholders

and must answer allegations that it has overcharged them for its services by several billion dollars since 1999.

The class action suit filed in 2004 by Los Angeles policyholder Benjamin Fogel claims that FGI and its subsidiaries paid themselves over \$4.5 billion in fees in the 2000 to 2002 time period, resulting in at least a 43 percent profit over the costs of the services that FGI provided the policyholders. Fogel seeks disgorgement of all excessive fees charged from 1999 to the present and an injunction against future excessive charges.

Acting Presiding Justice Thomas L. Willhite, Jr. issued the ruling which was concurred in by Justice Nora M. Manella and Justice Steven C. Suzukawa of the California Court of Appeal, Second District, Division 4, Los Angeles.

Benjamin Fogel was represented by Austin attorneys Philip K. Maxwell and Joe K. Longley, and Los Angeles attorneys Tom Girardi and Walter Lack.

FGI was represented by Raoul D. Kennedy of Skadden, Arps, Slate, Meagher & Flom LLP, San Francisco. Amicus Curiae the Foundation for Taxpayer and Consumer Rights was represented by Harvey Rosenfield, Santa Monica.

Allstate must cut California auto insurance rates 15.9% Insurance Commissioner Steve Poizner orders Allstate to roll back prices more steeply than the company had wanted. The insurer is considering a legal challenge.

By Marc Lifsher, Los Angeles Times, (3/19)

Allstate Corp., which covers about 1 of every 10 insured cars in California, has been ordered to cut its automobile rates by 15.9% -- an average savings of \$124 per car, state Insurance Commissioner Steve Poizner said Tuesday.

The new rate is effective April 14, and Allstate is considering whether to appeal the rate cut order in court.

"California's consumers deserve a competitive marketplace in which to shop around for the best rates that meet their needs," Poizner said in a statement.

"This reduction reaffirms my commitment to ensuring that excessive rates are not charged. At the same time, the rate reduction is fair and reasonable for the company." Allstate's reduction is the latest in a series of rate cuts in

California by dozens of automobile insurance companies since the summer of 2006. After losing a protracted court challenge, the industry began complying with regulators' insistence that it primarily base its premium-setting formulas on a person's driving record, number of years behind the wheel and total miles driven annually.

"It was very clear that they were charging too much," said Douglas Heller, executive director of the Foundation for Taxpayer & Consumer Rights, the Santa Monica-based advocacy group that successfully championed Proposition 103 in 1988. The voter-approved initiative turned insurance into a highly regulated business, similar to power companies and other public utilities.

Heller, whose organization had legal standing to partici-

pate in the Allstate case, predicted that other auto insurers would propose lowering their automobile premiums in rate submissions scheduled to be delivered to the California Department of Insurance this summer.

The order, which came at the close of a lengthy proceeding before an administrative law judge, was more than twice what the Northbrook, Ill., company wanted to grant its policyholders.

According to the order issued by Poizner on Friday, Allstate had requested permission to lower its rates by 7.1%. The department's rate-setting formula calculated that a 19.4% reduction was merited.

After months of legal arguments, a state administrative law judge granted Allstate a credit to cover the expenses of providing additional services to low-income neighborhoods and brought the final rate reduction down to 15.9%.

Allstate contends that it is being unfairly singled out by Poizner in being forced to cut rates by a larger percentage than other insurance companies.

"Suppressing one company's rates below the rest of the market is unfair to that company and not conducive to a healthy economy in California," Allstate spokesman Peter DeMarco said.

The company is also embroiled in a dispute with Poizner over the cost of its homeowner policies.



THOUSANDS OF FLORIDIANS RECEIVE PINK SLIPS FROM THEIR INSURERS

POA 3/25

During the course of the last three months, thousands of Floridians have received some unwelcome news — their homeowners insurance has been non-renewed.

Allstate, Nationwide, MetLife and State Farm are among the biggies who've been frantically sending out the notices to homeowners.

Ironically, these companies are allowed to sell auto coverage. Florida's Governor and legislators attempted — about a year ago — to stop this practice (known as "cherry picking") but were met with all sorts of legal action because the state did not have laws on the books that would allow an anti-cherry picking mandate.

POA members with homes less than 15 miles from the coast were able to secure coverage but it required going to the [Florida Market Assistance Program's](#) website and filling out a form. This is a free service that

matches homeowners looking for insurance with agents who still sell homeowners insurance.

A \$900,000 policy on a 2,400 square foot house in coral Gables, less than five miles from the ocean, spit out several quotes ranging from \$5,400—\$7,000 — less than the going rate in downtown Charleston, SC.

As of today, there are 437 insurers licensed to sell multi-peril homeowners coverage in the state of Florida. While many of those companies are finicky about the homes they insure, a homeowner can and will find coverage .

The truth is, if the companies holding mortgages wouldn't mandate homeowners insurance protection, only a small percentage of homeowners would actually buy it. They could self-insure themselves better than any insurance company currently offering policies.

The reason is simple: most Americans acknowledge that, as a rule, insurance companies do not pay claims in accordance with the terms of the policy. Policyholders realize that getting paid a legitimate amount for a legitimate claim, covered by the policy, is an uphill battle that requires time, money, strategic thinking, and perseverance. And, at the end of the day, claimants usually end up subsidizing multi-billion dollar insurance companies by paying far more than the deductibles against the repair bills.

It's time to take a hard look at self-insuring. Given the exclusions and policy language today, one would be far ahead of the game if a personal self insurance pool was funded annually.

Arm yourself with some of the recent legal decisions about the "[anti-concurrent clause](#)" and talk to your mortgage company.

QUOTE OF THE MONTH:

This beauty is a quote from State Senator, Bill Posey , of Rockledge, FL, after insurance executives were subpoenaed to testify before the Florida legislature:

"I haven't seen so much bobbing and weaving since Muhammad Ali did the rope-a-dope."

Fla.: Lawmakers Finish Insurance Hearing

By BRENT KALLESTAD, AP
(2/6)

After two more days of grueling questions to state regulators and insurance company executives, a special Senate panel wrapped up its business Tuesday by deciding it needs more information.

The Select Committee on Property Insurance Accountability said it wanted more sworn testimony from industry executives in mid-

February to gather additional information on why many companies haven't reduced premium costs to property insurance customers.

Executives from Allstate Corp., Nationwide Insurance Co. of Florida, Florida Farm Bureau Insurance, The Hartford Group and American Strategic Insurance testified under oath during roughly 16 hours of hearings over the two days.

The panel heard from several executives who said they were concerned about being able to recoup timely reinsurance payments from the state's expanded catastrophic fund in the aftermath of a major hurricane that could put companies on the brink of insolvency.

Florida regulators sought to suspend Allstate from writing any new policies last month, but the company is allowed to sell policies under a court injunction until the case is settled. Regulators claimed Allstate failed to turn over all documents requested in a subpoena.

The insurance giant's subsidiary, Allstate Florida, has dropped nearly a half million policies across the state in recent years in an effort to reduce its risk. The company currently underwrites about 200,000 homeowners policies in the state.



Lawmakers split over insurance: Florida's dilemma: Keep rates low or lessen financial risks from storms?

By Aaron Deslatte, Sun-Sentinel

(3/23)

A year after making sweeping insurance reforms, Florida lawmakers are divided about whether to keep pushing for lower homeowner premiums or allow them to start inching up.

To drive down rates, the state took on much more financial risk should a major hurricane strike. Now, the financial markets are riding out a Category 5 credit crunch, and that makes it less likely the state would be able to raise the money it would need if slammed by a Katrina-sized storm.

Support is building in the Legislature for ideas to lower the state's exposure.

This week, the Senate is expected to hear a plan floated by Chief Financial Officer Alex Sink to shrink the state's footprint in the reinsurance business – backup coverage insurers buy to lower their own financial risk. That would lessen the blow policyholders across Florida would absorb if a major storm forced the state to raise money through assessments tacked on to premiums.

The downside: Rates could go up, maybe 3 percent.

"The man on the street gets it," Sink said. "We did take on a tremendous amount of exposure – and we certainly didn't see the results we thought we would."

At the same time, the Senate Banking and Insurance Committee will unveil a package of proposed changes to keep pressure on insurers to lower rates.

And if lawmakers don't act, several key pieces of last year's insurance reform are set to lapse Jan. 1.

That would be fine with more conservative House [GOP](#) leaders, who are desperate to unshackle the private-insurance market.

"We are in a constant battle with rates," said Senate Democratic Leader Steve Geller of Cooper City. "It is unfortunate that there is such a big divide."

Lower rates?

The Senate package will include proposals to impose criminal penalties on insurers and raise the fines from \$20,000 a day to \$100,000 a day for violating state insurance rules. Insurers also would have to lower premiums overall when they shed riskier policies.

Senate leaders also want to abolish the law that let insurers impose automatic rate hikes. The Legislature suspended the "use and file" law last year, along with an arbitration board that heard insurer challenges to rate denials. Both come back in 2009, though, if the Legislature doesn't act.

The Senate panel will also try to extend a freeze on rates for the 1.3 million homeowners in the state-run [Citizens Property Insurance Corp.](#) – another of last year's efforts to save homeowners money that is set to expire at the end of the year.

If those three freezes lapse, insurance rates will start inching upward again, lawmakers say.

The net effect of last year's changes is an average 15 percent reduction in premiums statewide.

Lower state's risk?

But House Republicans are desperate to shrink the size of Citizens and shed the risk the government took on in a rush to reduce premiums.

"We do live in a risky place," said House Insurance Chairman Don Brown, R-DeFuniak Springs.

Without the Citizens rate freeze, homeowners covered by the "insurer of last resort" could have absorbed a 29 percent increase last year – and possibly as much as a 44 percent spike as the company became a magnet for riskier homeowners jettisoned from private insurers following the 2004 and 2005 hurricane seasons.

House Republicans argue the freeze has fueled a kind of insurance shell game, in which rates are kept artificially low until the next big hurricane hits. Then, the company won't have enough reserves to pay claims, will have to issue bonds and will tack assessments onto homeowner premiums that could take decades to pay off.

"Mary Shelley wrote a book about something like that one time," Rep. [Dennis Ross](#), R-Lakeland, told Citizens officials at a recent hearing, referring to the fictional Frankenstein's monster.

The House is pushing its own plan to prevent Citizens from becoming another monster. It would give financial incentives to companies willing to take over Citizens customers.

Sink, a Democrat who oversees Citizens as a member of the Cabinet, agreed it was time for Citizens premiums to start

climbing so the company can build more of a cash surplus before the next storm.

"It's not fair to the 70 percent of Floridians who are not in Citizens," she said. "When they can't cover their claims, guess who does? All of us."

The risk from Citizens, though, is only part of the problem. The Florida Hurricane Catastrophe Fund, which helps private insurers pay claims after major storms, was expanded from \$16 billion to \$28 billion last year as a way to offer cheaper coverage to companies and get them to lower premiums for customers.

But combined with Citizens, the two entities would be forced to sell \$27 billion in bonds to pay claims if a Katrina-sized hurricane hit a major population center in Florida – and the markets might not be able to absorb that blow.

"I think both sides have concluded they can't fund what they did," said Gerald Wester, a lobbyist for insurers and the American Insurance Association.

Dire market

Last summer, the state tried to sell \$7 billion in bonds to raise cash for the fund, making presentations in California, Minnesota and New York, only to be rebuffed by investors. The state wound up selling half the bonds at a higher interest rate that costs taxpayers \$20 million more a year.

At about the same time, investment firms that had already purchased \$2.6 billion in bonds from Florida were asking for their money back in the

continued on page 32

Lawmakers split over insurance... *continued from page 31*

scramble to raise cash in the subprime meltdown. Just last week, the last note holder opted not to keep its money with the state.

The state's director of bond finance, Ben Watkins, said the catastrophe fund has more than \$2 billion in reserves –

proceeds from the \$3.5 billion sale – and wouldn't have to return the full \$2.6 billion from the older bonds until the end of the 2008 hurricane season. Still, the market situation is dire.

"You couldn't sell these today. There are no investors be-

cause of the whole subprime and credit-market conditions," Watkins said. "That contagion has spread."

John Forney, an investment adviser and a managing director of Raymond James Financial who works with both funds, has said no state has ever tried to find buyers for the size of the offering Florida would have to undertake if a

major hurricane struck.

"You're talking about trying to access the markets for an unprecedented amount of money in what we all agree would be uncertain, stressed conditions in the economy," he told lawmakers. "It's difficult to overestimate the difficulty of this challenge."

House committee gives Citizens insurance a hard look

By Tom Zucco, St. Petersburg Times March 14, 2008



Don Brown felt he had to say it. "Millions of Floridians are unaware that they are just one hurricane away from the equivalent of a massive tax increase," Brown told the Florida House Committee on Insurance on Friday. "I think people deserve to know that."

A DeFuniak Springs Republican, the committee chairman and an insurance agent, Brown and his colleagues spent five hours asking executives from state-backed Citizens Property Insurance Corp. what would happen if the state was hit by a major hurricane, and who would pay for it.

The response from Citizens was that Florida policyholders would be liable for more than \$10-billion in assessments if a one-in-100-year storm struck the state.

The amount would be paid by policyholders over 30 years and would be in addition to assessments charged by the state's catastrophe fund.

Under current law, all Florida home and auto owners can be assessed if Citizens runs a deficit, as it did after the storms of 2004-05. Floridians are paying more than \$800-million over 10 years to cover those losses.

The likelihood of more assessments has grown, Brown argued, because as Citizens' exposure to risk continues to

grow, its rates haven't increased since late 2005 and will remain frozen until January 2009. A bill in the Senate would tack on another year of the rate freeze.

Citizens actuary Paul Erikson estimated the company will lose about \$120-million a year in uncollected premiums in its high-risk account because of the freeze.

Asked if Citizens has had inadequate rates since 2007, when the freeze went into effect, Erikson replied, "Yes."

Unlike last month's Senate hearings with Allstate, Nationwide and the Hartford, the tone this time was non-combative.

Committee members had nothing but praise for Citizens and its 1,000-member staff, which is about a fourth the size of a comparable private company.

But the company has had to be nimble. The Florida Legislature last year changed insurance law in three critical areas. The state's catastrophe fund was increased so that private insurers would have more access to cheaper back-up coverage, with the savings to be passed on to policyholders.

And in addition to freezing its rates, Citizens was allowed to have rates competitive with private carriers.

Brown would like to see those

last two parts undone, if not the entire package.

"There's an old saying that when you find yourself in a hole, the first thing you need to do is stop digging," he said. "(Citizens) financial picture is better today than ever before, but not in the event of a one-in-100-year storm. Shouldn't we stop digging?"

Citizens chief financial officer Sharon Binnun smiled. "We look to the Legislature for direction," she said, "and do the best we can."

Brown is not without his critics. State Sen. Mike Fasano, R-New Port Richey, a member of the Task Force on Citizens Claims Handling and the Senate's select committee on insurance, said that if Florida was hit by a Katrina-like storm, "Yes, there will be assessments. But every other insurance company in Florida will be hurting, too."

"I'm disappointed that (House) Speaker (Marco) Rubio allowed this type of exhibition to go on in the Florida House. Rep. Brown can talk about Citizens premiums not being high enough, but a lot of Floridians can't afford it now."

One of two lawmakers to vote against the 2007 legislative changes, Brown said he will schedule another meeting in the coming weeks to revisit the issue.

Regulators clear Allstate in coast-coverage denial
Insurer decided to halt new policies in 11 Md. Counties

By Laura Smitherman, Baltimore Sun (2/11)

Maryland regulators cleared Allstate Corp. Monday of wrongdoing in its decision to stop writing new homeowner policies in certain coastal areas, a move that had been criticized by consumer advocates and state legislators.

The regulatory decision comes as the General Assembly takes up legislation intended to protect consumers and ensure the affordability and availability of homeowner's insurance in coastal areas that are most vulnerable to hurricanes.

Insurance Commissioner Ralph S. Tyler is working with legislators to craft the bill based on a task force report that's expected to be released in coming days.

Tyler acknowledged that his office's decision in the Allstate case, which was triggered by a complaint from the consumer advocate People's Insurance Counsel, might be "disappointing to some." But, he said, it was based on "the law as it is written, not as we might wish it to be."

He added that while homeowner policies for coastal areas are available, they have gotten more expensive.

"The market has gotten tighter,"

Tyler said. "The legal and regulatory problem we're concerned about is what can you do to protect consumers without discouraging insurance companies from writing in the area all together."

Some insurance companies have moved to limit their liability along the Eastern Seaboard and in some cases near the Chesapeake Bay, noting warnings by scientists that a warmer Atlantic Ocean will lead to an increase in the number of strong hurricanes hitting those areas.

Allstate, one of the largest insurers in Maryland, said it would no longer offer new property insurance in all or part of 11 counties in the state. Existing customers weren't affected by the change.

Retreat after storms

Insurance companies are retreating from coasts after a series of devastating storms in recent years, including Hurricane Katrina, which swamped Louisiana and Mississippi. Risk modelers, who forecast natural disasters for the insurance industry, have updated their methods to take into account higher sea temperatures.

Allstate, which implemented its policy in June, submitted modeling data in the regulatory case

showing that several hurricanes making landfall in Worcester County, Virginia and Delaware could cause hundreds of millions of dollars in damage in Maryland.

Insurers also say that development and higher property values along coasts have increased their exposure to disaster losses. Allstate and other companies say they limit their liability in catastrophe-prone areas to remain financially healthy enough to pay the claims of current customers.

"It has always been our intent to manage catastrophe exposure in a way that avoids disrupting the Maryland insurance market while maintaining our ability to protect our policyholders from a position of financial strength," Allstate spokesman Debbie Pickford said in a statement. The People's Insurance Counsel, a division of the attorney general's office, argued that Allstate's move was arbitrary and unreasonable, and that the company failed to show that the rates it charged weren't enough to cover projected losses.

Ilene J. Nathan, an assistant attorney general, said the counsel's office is reviewing whether to appeal the insurance commission's decision through the courts.

The Maryland Insurance Administration, which heard the case,

found that Allstate's move was not discriminatory and had a reasonable business and economic purpose.

State lawmakers also expressed concern last year over Allstate's move, which was announced in late 2006. They held hearings on the issue but eventually voting down a bill that would have forced companies to write policies in coastal areas. Instead, the legislature approved a task force to study the issue.

Legislative proposals

This year, legislators are considering proposals to address the legal standard governing when insurers can change their underwriting policies and whether insurers should be required to get prior approval for any changes.

In addition, lawmakers said, a bill could address deductibles related to coastal coverage and how homeowner efforts to protect their property and smart planning by localities should be reflected in policies.

"We just found it to be very arbitrary that you can come in and cherry-pick where you did not want to do business," said Del. James N. Mathias Jr., an Eastern Shore Democrat and former Ocean City mayor.

House Democrats push for lower insurance rates

BY CHRIS CHRISTOFF • FREE PRESS (3/19)

LANSING -- House Democrats said Tuesday they'll move to stop insurance companies from using consumers' credit scores to determine auto insurance rates, and to give the state more clout against high rates.

But a leading Democrat admitted that approval in the Republican-controlled Senate is doubtful until perhaps this year's lame-duck session.

"You never know what's going to happen then," said Rep. Virgil Smith III, D-Detroit, chairman of the House Insurance Committee.

Democrats hold the majority in the House.

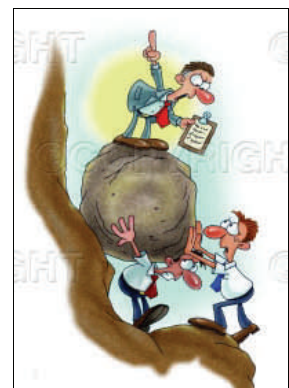
Smith said that on Thursday his committee will consider five bills aimed at reducing insurance. He said public pressure is mounting to do something about high auto insurance rates, particularly in urban areas like Detroit.

He said auto insurance should be based on driving records only. Rep. Bettie Scott, D-Detroit, said the proposed bills would give drivers help against high rates.

A coalition of attorneys, health care specialists and consumer advocates joined Smith and Scott at a news conference as they called for curbs on insurance rates.

But an industry spokesman said the Democratic proposals would result in higher rates for many consumers. One bill would change the way insurance companies file rates.

Currently, they set rates and then file them with the insurance commissioner. The Democratic plan would require insurers to receive the commissioner's approval before rates take effect.



BUILDING MANAGER'S KNOWLEDGE OF LEAKY PIPE INSUFFICIENT TO PROVE NOTICE

Harris Martin,, (3/3)



NEW YORK — A building manager's knowledge of a leaky pipe on the roof was insufficient to prove notice of a mold hazard in one of the building's apartment units, a New York appellate court affirmed on Feb. 26. [Lark v. Leon B. Dematteis Associates, et al., 2008 NY Slip Op 01633 \[No. 102031/05\] \(N.Y. Sup. Ct., App. Div., 1st Dept.\)](#).

The New York Supreme Court Appellate Division, 1st Department said that, without any other evidence of notice, a trial court properly dismissed the complaint by Margaret B. Lark against Leon B. Demat-

teis Associates.

Lark complained that the leaky pipe on the roof of her building should have alerted Dematteis Associates to problems in her unit.

The Appellate Division noted that Lark's problems did not surface until eight days after the building manager discovered and repaired the leaky pipe on the roof. The appellate court also noted that Dematteis & Associates repaired the leak in Lark's bedroom closet and removed a mold-contaminated floor and wall "within days of being notified

of the condition."

New York Supreme court Justice Leland DeGrasse said in granting Dematteis Associate's motion for summary judgment on March 8, 2007, that Lark "seeks to impose a nonexistent standard of actual liability."

Franklin Ogele of Newark, N.J., was counsel for Lark.

Haydn J. Brill of Brill & Associates in New York represented Leon B. Dematteis Associates.

State Farm not such a good neighbor?



Speaking of bad neighbors!

(WABC) -- Thousands of homeowners in New York are scrambling to find a new insurance company after State Farm insurance took the dramatic action of canceling policies of anyone who lives within 2,500 feet of any body of water.

Long Island reporter Emily Smith has the story.

Most residents like Bayville for its seaside charm and proximity to the Long Island Sound. But buyer beware, the area's best quality, for some, has become a nightmare.

"No insurance company wants to touch Bayville...because it's near the water," resident Tom Plactere said.

Kevin Keenan had better luck with State Farm. He was insured by the company for 20 years, until recently. He received a notice saying his homeowner policy will be

dropped because of a potential storm.

He says he never filed a claim with the agency, and adds that he always paid on time.

In a statement sent to Eyewitness News, State Farm says, "Our focus is on coastal properties that are in areas most susceptible to the perils of wind and hurricane damage. We worked for more than a year to arrive at decisions that are best for State Farm and its customers. This is a difficult decision for us, but a necessary one."

Some Long Islanders, including Keenan, say insurance companies abandoning homeowners would make more sense if all houses were on the water. But they're not. Many are up on hills. A State Farm agent on Long Island says it's not about elevation, but proximity to the water.

The agent says the new plan affects customers living within 2,500 feet of the water, which is pretty much all of

Bayville. Donna Riso just moved to the area and has no homeowner's insurance.

"Theres just no way, if you move here, you can get homeowners insurance," she said.

Senator Carl Marcellino says he's been fighting for a bill that would make it illegal for insurance companies to basically drop or shun an entire community.

"In the good times, you pay premiums. In bad time times, they're supposed to be there to help," he said. "That's the business, and they should honor their commitment."

Unfortunately, he says it won't end with State Farm. He expects other companies to do the same. So if your passion for the water outweighs anything else, hang in there. But don't just expect an insurance company to be the "good neighbor" you thought you had.

TEXAS HOMEOWNERS BRACE FOR HIGHER INSURANCE RATES

POA (3/18)

Farmers Insurance just filed for higher rates across Texas. The average Texas Farmers policyholder will see about an 8% increase over last year and will occur beginning with policy renewals on May 16th.

Coastal customers will see an increase closer to 13.5%.

The company cites loss trends and rising costs such as the price of building materials as the reason for the hike.

Under insurance reforms passed in 2003, insurers need only to notify the insurance

department of rate hikes. But, if the insurance commissioner determines the hike is unjustified, insurers are subject to rate rollbacks and possibly refunds.

Rarely do insurance commissioners resort to such "extreme" measures such as refunding ill-gotten gains to consumers. Instead, they accept their "promises" to not do it again.

The 2003 Band-Aid fix was implemented after Texans grew angry over rate increases. Legislators felt that tougher rate restrictions would result in more

carriers exiting the state.

Today, legislators may want to rethink a stronger solution to the problem: an anti-cherry picking statute that forces insurers who sell auto policies in Texas to also sell homeowners insurance in Texas. If the insurer abandons homeowners, they can take their auto policies with them.

When a limp wrested approach proves to be ineffective, it's time to switch gears and try a more heavy handed approach.



Do you believe that construction costs sharply rise when home values sharply fall? That's their argument. Maybe when pigs fly.

Some are wary of industry's plan to aid insurance market

BY R.A. DYER, STAR-TELEGRAM STAFF WRITER (3/23)

AUSTIN -- Consumer advocates remember what happened the last time the state made changes designed to improve the market for homeowners insurance.

Rates remained high, they said, while coverage plummeted.

Now they're crying foul at an industry-backed proposal that they say would raise premiums for many Texans while obscuring bigger problems for customers statewide.

Supporters say the changes would improve the statewide insurance market by shoring up a program that insures against major hurricanes. They say the rules have subsidized coastal residents for years and discouraged companies from doing business in the state.

At issue is the Texas Windstorm Insurance Association, which the Legislature created in 1971. The association provides windstorm and hail coverage to property owners who

cannot obtain it elsewhere.

Under state law, all property insurance companies that do business in Texas, regardless of whether they write insurance on the coast, must participate in the TWIA and can be on the hook for losses if it runs out of money.

Industry representatives and some key lawmakers say the TWIA is underfunded. That means another big Gulf Coast hurricane could wipe out the fund and lead to big payouts by insurers across Texas.

And while state law allows insurers to get repaid from the government treasury through a tax adjustment, catastrophic losses could still bring liquidity problems, some industry representatives and lawmakers say.

State Rep. John Smithee, chairman of the House Committee on Insurance, says an underfunded association can discourage insurers from entering or expanding in the Texas market.

"The basic problem is that anytime a new carrier comes into Texas and writes a policy -- whether that's in Fort Worth or Dallas or Abilene -- the state forces them to take a part of the risk pool of the windstorm association," said Smithee, R-Amarillo. "Some of these companies are taking on more risk on the coast than they are in their own policies they write inland ... We're not seeing a big increase in [insurance competition], and that tells you that the system is not working in the way it should."

TWIA funding 'inadequate'

Rick Gentry, executive director of the Insurance Council of Texas, said TWIA rates historically haven't been high enough to cover prospective losses. He notes that the average annual rate increase for TWIA's residential property customers has been 1.5 percent since 1988.

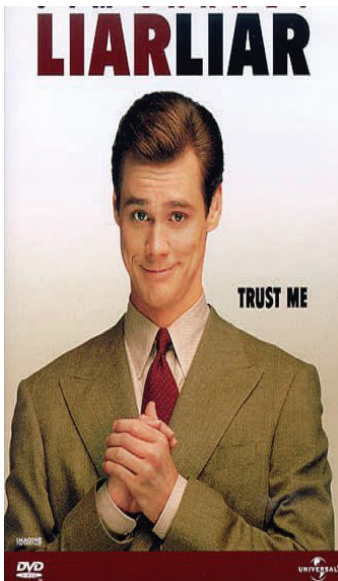
"I am hard-pressed to think of any other good or service



continued on page 36

Some are wary...

continued from page 35



whose price has been artificially suppressed for the last 19 years, especially in the face of increased hurricane activity in the Gulf Coast," Gentry said.

The insurance council also notes that the association has \$1.7 billion to cover losses, although a Rita-sized hurricane could cause more than \$5 billion in insurable damages.

"Because of the inadequate funding, a major storm would cause both Texas insurance companies and citizens statewide to pay billions of dollars to subsidize their losses," Gentry wrote in a recent position paper.

He disagreed that statewide rates are out of line, noting that Texas historically has had relatively high rates because of its position along the Gulf Coast. But shoring up the association could improve the overall market, he said.

He also said he doubts that the industry-backed changes would lead to "astronomical increases" in TWIA rates -- although he acknowledged that they might rise.

'Long line of excuses'

The Texas Watch consumer group says the solution to a defective market isn't costlier insurance, but more accountability for insurance companies.

Alex Winslow, director of the organization, said the last insurance overhaul, in 2003, worked to the benefit of insurance companies at consumers' expense. That legislation was passed in response to a home insurance crisis associated with an onslaught of toxic mold claims.

Lawmakers predicted that the

new rules would bring lower premiums by increasing competition among insurers. Winslow said that's not how it worked out.

"The average premium has fallen about 5 percent, but the average loss for policies has fallen about 60 percent," Winslow said.

"People are paying [about] as much as they were paying before [the insurance overhaul legislation of 2003], and they're getting less for it."

Winslow said that some adjustments to the TWIA might be appropriate but that the debate is mostly a smoke screen for the real problem of excessive insurance rates.

"This is just the last of a long line of excuses [from the industry] about why the Texas policyholders should pay more -- and homeowners are fed up with it," Winslow said. "Every time the industry is asked to do the right thing [and lower rates], they come up with another reason they can't. ... This is just the excuse du jour."

Winslow said the state must require companies to get approval before raising their rates. The rule change in 2003 allowed companies to file their rates with regulators and then quickly start charging them, although regulators can order rollbacks.

Separate issues

State Sen. Troy Fraser, the Horseshoe Bay Republican who co-wrote the 2003 law, agreed that lawmakers need to adjust the rules in the insurance market and fix the TWIA. But he said the issues are distinct.

"From a Fort Worth perspective, [you should] want this windstorm insurance association fixed because if there is a big storm event, [a Fort Worth resident] could get stuck with some of the losses from some guy's million-dollar house in Galveston," Fraser said. "That's the

reason it needs to be fixed. But it's not connected to overcharges of customers. That's a classic case of the insurance companies trying to put up a smokescreen."

Rather, Fraser said a big reason that rates remain too high statewide is that some of the state's major insurers have spent years fighting ordered rate reductions in court. As chairman of the Senate Business and Commerce Committee, he said, he would look to address that problem when the Legislature convenes in 2009.

Solid profits

According to the Texas Insurance Department, the ratio of losses paid to premiums collected for Texas home insurers was 27.8 percent in 2004, 56.8 percent in 2005, 34 percent in 2006 and 36.5 percent in 2007. Percentages below 100 mean that the companies are paying out less in losses than they are collecting in premiums, a general sign of profitability, according to the department.

Since the passage of insurance overhaul legislation in 2003, the average Texas home premium has gone down by 5.6 percent but insurance losses have fallen by 58.8 percent, according to the state Office of Public Insurance Counsel, which represents consumer interests before regulators.

The most recent data from the New York-based Insurance Information Institute shows that Texas has the highest home insurance premiums in the country. However, Rod Bordelon, director of the Office of Public Insurance Counsel, said average rates in Florida recently surpassed average rates in Texas.