

State Farm suit hits federal court

It alleges conspiracy to lowball payouts

By Rebecca Mowbray, Times Picayune

A case alleging that State Farm Fire & Casualty Co. and the company that provides its claims estimating software engaged in a conspiracy to depress construction unit prices and underpay homeowners insurance wind claims from Hurricanes Katrina and Rita comes up for its first hearing in federal court today.

The case, Kathleen and Gordon Schafer v. State Farm Fire & Casualty Co. and Xactware Inc., tackles the corollary to recent allegations that insurance companies have inflated flood damages to take advantage of the National Flood Insurance Program. The suit claims that Louisiana's largest insurance provider, aided by the insurance industry's main supplier of construction pricing data, manipulated unit prices for construction materials to systematically lowball homeowners insurance payouts.

The specific issues before Judge Stanwood Duval Jr. are motions by the defendants to dismiss the case and strike preliminary motions seeking class-action status, but not much is expected to happen since it's the first hearing of the case in U.S. District Court.

But those who are following the insurance issues highlighted by Hurricane Katrina say the case is potentially significant.

Bob Hunter, director of insurance at the Consumer Federation of America, said that State Farm is such a large company, if it is manipulating Xactware's prices to lowball

claims, it would cause significant harm to consumers. "As with anything else with State Farm, you're talking huge amounts of money," Hunter said.

Hunter has long criticized the insurance industry for having many companies use the same outside vendors for things such as construction pricing, credit scoring and claims history data. Insurance companies are exempt from federal anti-trust laws so that companies can share information to guard against fraud and so that small mutual insurance companies have enough loss data to set prices.

The insurance industry says this limited exemption ultimately creates competition in the industry by helping more insurance companies to exist. But Hunter charges that outside companies such as Xactware are vehicles for collusion.

"There are very serious anti-trust questions," Hunter said.

Last August, Xactware Inc., the Utah company that produces the Xactimate property claims estimating software and pricing database, was purchased by ISO, the New Jersey company that creates standard insurance policy forms and aggregates claims data.

In a press release about the deal, ISO says that Xactware's customers include 16 of the top 20 property insurers in the country, and that during the record-breaking hurricane seasons of 2004 and 2005, Xactware's products were used to settle more claims than all competitors combined.

Both ISO and State Farm said they would have no comment on pending litigation.

Lower estimates

The case itself involves a 3128 State Street Drive couple whose home was dam-

aged in Katrina and who say that State Farm didn't pay them enough money. Their suit alleges that while State Farm claims it uses Xactimate prices, the company shaves money off the prices so it can depress claims estimates and underpay policyholders.

For example, the suit said that to remove and replace a 5-inch furnace vent, rain cap and storm collar, Xactimate's commercially available database says it would cost \$35.29, while State Farm's computers offer people \$34.09 to replace the vent. Meanwhile, the Home Builders Association of Greater New Orleans says both prices are too low: The trade group says the job costs \$40 to \$55.

To remove and replace vinyl siding, Xactimate says the job costs \$2.95 per square foot, but State Farm offers customers \$2.46 per square foot. The Home Builders Association says the job costs \$3 to \$4.25 per square foot.

And to remove and replace 4-inch batt insulation, it should cost 98 cents per square foot by Xactimate's database, but State Farm uses 85 cents a square foot on its estimates. The Home Builders Association says replacing such insulation costs \$1.15 to \$1.30 per square foot.

The suit aspires to become a class action representing all State Farm customers in Louisiana who suffered storm damage. It alleges horizontal price-fixing between State Farm and Xactware to depress repair prices across the insurance industry; breach of contract with the insureds, who didn't have enough money to fix their homes; negligence because Xactware should have known that State Farm was misappropriating its data; and fraud.

continued on page 4

KNOW YOUR ENEMY: XACTIMATE:

- ◆ Xactimate is the pricing software program that allows insurers themselves to INPUT phony prices so they can then lowball YOU.
- ◆ POA professional member, Alex Watkins of Capitelli & Wicker (New Orleans, LA) filed this case in Louisiana because the insurer's actions violates state anti-trust laws.
- ◆ More insurers may be added to the suit.
- ◆ If this suit is successful, insurers may have to stop using lowball pricing practices.

State Farm suit hits....

continued from page 3

Allstate case was dismissed

In briefs, State Farm denies the allegations and says it properly adjusted claims. It says the case should not become a class action, because each home repair is different, and such a case would involve tens of thousands of different line items, the prices of which change over time. "The Court should not be swayed by plaintiffs' mirage of simplicity," the brief says.

Xactware says the plaintiffs haven't established why the software company belongs in the suit. "State Farm used the raw pricing data from Xact-

ware to adjust claims as it would use any other tool of the trade. State Farm could accept, reject, or modify the pricing data as it saw fit or supplement the data using other resources," Xactware's motion to dismiss reads. "Xactware never dealt with Plaintiffs, visited their home or played any role in how State Farm adjusted their claim."

Both companies say that the Schafers have not demonstrated that they were harmed by the alleged lowballing and couldn't afford to repair their property. They further say the plaintiffs have not made the case that State Farm and Xactware engaged in a horizontal conspiracy -- an agreement among competitors to fix

prices and violate anti-trust rules -- because they are not competitors.

State Farm further notes that last month, a different case alleging that a major insurance company employed below-market pricing in its damage estimates, *Aguilar v. Allstate Fire and Casualty Insurance Co.*, was dismissed by Judge Martin Feldman.

Allstate unit pricing challenged after Katrina

By Rebecca Mowbray
Times-Picayune

Something about the insurance settlement on the Slidell townhouse seemed fishy to Chris Karpells, a prospective buyer who would be collecting the insurance money as part of the deal.

As he pored over the fine print, what caught Karpells' eye was this: Allstate seemed to have two different ways of pricing the damage repair costs, depending on whether the damage at 286 Marina Drive was chalked up to flooding or wind.

If Allstate attributed the damage to wind or rain, for example -- putting it on the hook for payment under the customer's homeowner policy -- the company priced the cost of removing and replacing the drywall at 76 cents per square

foot. But if the damage was blamed on storm surge or flooding, the estimated cost of removing and replacing the drywall more than quadrupled, to \$3.31 per square foot.

"On my best day, I couldn't get my client paid that much for Sheetrock. It would almost be misrepresentation or fraud," said Karpells, a registered public insurance adjuster as well as a real estate investor. "What the hell's the difference between wind Sheetrock and flood Sheetrock?"

A key difference between flood Sheetrock and wind Sheetrock is this: Allstate must pay for damage covered by its homeowner policy. But damage blamed on flooding is covered by the National Flood Insurance program, set up by the federal government and subsidized by taxpayers. And who decides which policy covers which damages? As with 96 percent of flood policies these days, it is the private insurer, in this case Allstate.

Drywall wasn't the only construction material cost that suddenly skyrocketed when

Allstate was assigning the damage to the flood insurance program, Karpells noted.

The cost to recarpet the master bedroom, bathroom, loft and stairwell -- upstairs spaces that hadn't flooded and therefore were covered under the homeowner policy -- was pegged by Allstate at \$23.48 a square foot. But when it came to replacing the same carpet in downstairs areas covered by the flood policy, Allstate set the price at \$28.43, a 21 percent jump.

And so it went: For texturizing and repainting upstairs walls, Allstate set costs at 80 cents a square foot. The cost to the government program for apparently identical work downstairs: \$1.15 per square foot, a difference of more than 40 percent.

Karpells said that, in his work as a public adjuster, he has seen the dual pricing on almost every Allstate adjustment that lists the damage line by line. And from his experience, Allstate is the only company t

PROOF OF ALLSTATE'S PRICE DISCRIMINATION

Dollars vs. Sense

Removing and replacing dry-wall (per square foot)	Price if covered by Flood insurance (rising water) = \$3.31	Price if covered by Allstate (wind and/or driving rain) = \$0.76
---	--	---

Cost to recarpet (per square foot)	Price if covered by Flood insurance (rising water) = \$28.43	Price if covered by Allstate (wind and/or driving rain) = \$23.48
------------------------------------	---	--

Texturing and repainting walls (per square foot)	Price if covered by Flood insurance (rising water) = \$1.15	Price if covered by Allstate (wind and/or driving rain) = \$0.80
--	--	---

continued on page 5