

State Farm suit hits....

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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

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that's doing it, said Karpells, a third-generation carpenter from Massachusetts who moved to Slidell several years before Katrina hit. Karpells said he believes that "someone is saying, 'On a flood policy, we use this database. On a wind policy, we use this database.' They're front-loading all the money on the flood policy."

Karpells is not alone in his suspicion that Allstate is gouging the government in order to minimize its own exposure to post-Katrina repair costs -- a charge Allstate flatly denies. "Our firm position is that there are not any discrepancies in the rates charged," said Mike Trevino, a spokesman for Allstate. "The component prices reflect current market conditions. And they are the same for wind and flood."

Cindy Montgomery, a public adjuster from LaPorte, Texas, said she has seen the dual pricing in numerous Allstate cases in St. Tammany, Orleans and St. Bernard parishes and on the Mississippi Gulf Coast.

"I ended up with probably a hundred of these," said Montgomery, who is with Anchor Mitigation and Proof of Loss LLC. "Seventy-seven cents was nowhere near reality, and they knew it. I told them, and hundreds of other adjusters told them."

And the dual price list for repair costs has not been the only method of adjustment that lets Allstate be more generous with the public's money than its own.

Sometimes almost the entire burden is passed to the flood program. Down the street from

the townhouse Karpells' business partner bought, for example, is Guy Smith's unit at 1546 Marina Drive: an almost identical townhouse with Allstate coverage and similar damage.

Even though both had flooded to the same depth, 42 to 48 inches, the financial burden at 1546 Marina Drive was tilted even more heavily to the federal insurance program, saving Allstate money. Smith was offered \$170,927 for flood damage, while Allstate agreed to shoulder only \$20,172 for roof and upstairs damage.

Indeed, in a one-page summary that contained no breakdown of costs or damages, Allstate's adjuster had declared that the appropriate response to damage at 1546 Marina Drive was to "replace" the three-story building, even though only the ground floor flooded.

"In my wildest dreams, I couldn't submit something like that and get it paid," Karpells said. "It's just so nonreflective of the damage that it's bizarre. The building was not destroyed. It was not a total loss."

Karpells thinks the flood damage at Smith's unit was probably about \$80,000 to \$85,000. Smith, a New Orleans firefighter, agrees that the unit wasn't a total loss. He was able to repair the damage and has been living in his townhouse since last September.

More disturbing still was the experience of Allstate customers Robert and Merryl Weiss, a Slidell couple who eventually took Allstate to court. As part of their flood insurance claim, Merryl Weiss drew up a handwritten list of damaged household contents, mostly fishing equipment. Her claim came to \$38,848.35.

During depositions taken in

connection with the litigation, they discovered that on the contents list submitted by Allstate for payment under the Weisses' flood policy, the value of the loss billed to the federal program had soared to more than \$139,000. Fishing gear was nowhere on the list, but things had been added that the Weisses didn't even own, including furs, jewelry and the like.

"When Allstate pays a claim under a flood policy, they are using the checkbook of the United States Treasury. When they pay a claim under their homeowners policy, they are using the Allstate checkbook. For every dollar paid out of the federal treasury under flood, Allstate takes a credit and keeps a dollar. Essentially Allstate is profiting at the expense of the American taxpayer," Weiss attorney John Denenea said.

Allstate's Trevino declined to discuss the specifics of the claim on Karpells' townhouse, but said that the cost of repairs changes over time, and the cost of repairing one room versus another can vary, depending on how the damage occurred.

"The cost to repair wet drywall versus dry drywall is different. The cost to repair carpet from one room to carpet of another room may be different because you may have different quality carpet from room to room," Trevino said. "You can have different methods and approaches regarding paint. In one room, you may have one coat of paint, but in another room, you may need more than one coat of paint depending on the color."

Trevino further noted that public insurance adjusters, people who are hired to represent consumers after disasters to make sure they're paid properly, have an agenda.

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Karpells rejected Trevino's insinuation that his profession as public adjuster was a factor in the dispute. The adjustments, he noted, were done for the previous owner of the townhouse at 246 Marina Drive. No public adjuster -- with or without an agenda -- was involved.

Moreover, Karpells argued, market fluctuations in repair costs couldn't account for the differences between prices on the flood and homeowner adjustments. They were done within two months of each other, too short a time for them to have been so extreme.

As for Trevino's suggestion that materials used upstairs might have been of different quality than those used downstairs: Not so, Karpells said. The carpet was the same on all floors, and the texture and paint on the walls was identical throughout the house.

"It's apples to apples," Karpells said. "The facts speak for themselves."

Craig Berthelot, vice president of the Home Builders Association of Greater New Orleans and owner of Berthelot Construction Services, which renovates and repairs storm-damaged homes in the New Orleans area, said that the real price for replacing drywall is between the prices that Allstate calculated.

Without the tear-out portion of the job, it costs about \$2 to \$2.50 per square foot to replace drywall, he said. The \$3.31 billed to the flood program for tearing out and replacing drywall is high but more realistic than Allstate's 76 cents on the homeowners

policy, Berthelot said.

Allstate is the nation's largest publicly held insurer of homes, autos and other personal risks. But when Katrina hit, the policies it had written in Louisiana were not backed up by reinsurance, a corporate policy that kicks in to cover an insurer's losses beyond a certain level in the event of a catastrophe like a hurricane.

Reinsurance paid for an estimated 45 percent of U.S. losses incurred by insurers as a result of the 2005 storms, according to the Insurance Information Institute, but Allstate was on the hook for the entire cost of damages covered by its Louisiana customers' homeowner policies. By the end of 2006, it had paid \$1.4 billion in homeowners claims in Louisiana, where it is, after State Farm, the state's second-largest residential insurer.

Trevino said that reinsurance wouldn't have saved the company much money, and having to pay out of its own pocket didn't affect the company's generosity in handling claims. Nor did it inspire the company to slough off damages onto flood policies, he said.

Facing at least 200,000 claims after Katrina, the largest disaster it had confronted, the National Flood Insurance Program looked for ways to expedite payments to policyholders.

On Sept. 21, 2005, three weeks after the storm, acting flood program Director David Maurstad, who consulted regularly with insurers after the storm, issued a memo expediting the processing of flood claims.

The memo waived the requirements that customers prove their losses and instructed the insurance companies to pay the flood policy limits if the home was washed off of its

foundation or if the home was in "standing water" for "an extended period of time."

Ed Pasterick, a senior adviser to the flood program, offered this explanation: "What we didn't want people to do was be penalized while we were determining if it was wind or water. He (Maurstad) just made a decision that he didn't want people to have suffer because of it."

The memo is widely credited with getting money into disaster victims' hands quickly and is upheld as an example of business and government working together to handle a challenging situation.

In hindsight, others have begun to wonder if it didn't send a signal to the private insurance industry that the federal treasury was their cookie jar and that no one would be looking if insurers helped themselves at the public's expense.

As the flood program went broke after Katrina, requiring a massive taxpayer bailout, U.S. Rep. Gene Taylor, D-Miss., began to ask pointed questions about how the rules got eased so quickly and in ways that were so advantageous to the private insurers. After all, FEMA, the agency that runs the flood program, was also the agency that had proved too hopelessly dysfunctional to make the adjustments that might have smoothed the flow of desperately needed public money to prostrate local governments.

"Our experience is that these guys didn't do anything to speed up the program anywhere else. Why did they do it here?" asked Brian Martin, a Slidell native who is Taylor's policy director. "I suspect that the idea came from the insurance companies."

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POA REALITY CHECK

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Taylor's hunch is that the flood program eased its rules at the behest of the private insurers, who stood to benefit directly if the lion's share of losses could be laid off on the flood program, rather than homeowner policies.

"They get to go right out there and give them a check. It's from the federal government," Martin said. "It gives the homeowner something so that there's not huge pressure on the insurance company to pay something now.

"The flood insurance program made it easy for a few of the insurance companies to manipulate those claims to put it all on flooding," Martin said. "The taxpayers pick it all up."

"It was a very bad idea," said Bob Hunter, who oversaw the federal flood insurance program in the Ford and Carter administrations and now is a consumer advocate as director of insurance at the Consumer Federation of America. "It allowed these insurance

companies to come in and say, 'This was all flood damage,' and hand out a check without any analysis of whether it was wind damage."

But even Hunter, skeptical as he was, didn't imagine that a company would develop two different price lists for nearly identical repair work. He thought the insurance companies would stop at trying to argue that damages were due to flooding, rather than wind. Indeed they have in a number of well-publicized lawsuits -- notably including U.S. Sen. Trent Lott's fight to recover more money from the homeowner policy that covered his destroyed waterfront home in Pascagoula, Miss.

The dual price lists are something else again. "I had no idea they would be so blatant," Hunter said.

FEMA also expressed bewilderment over the idea of charging government and private insurers different prices, when told about practices in the New Orleans area.

"I don't have an explanation for that," said Tim Johnson, senior insurance examiner on the claims section at FEMA. "If that's what they say is hap-

pening, I would love to see it. The overpayment surely does affect me."

The lack of uproar from customers is easier to understand. Essentially, claims adjustment, when both flood and homeowner policies are in play, is a zero-sum game. The customer wants insurance to cover the cost of repairing or replacing the house and has little reason to care whether the federal program or the private insurer foots the bill.

Smith, the firefighter who owns 1546 Marina Drive, said Allstate told him not to worry about whether the damage was attributed to wind or flood, that it would all come out in the wash. "It was basically, 'Look at the entire package, don't look at the wind claim for what it is, just look at the entire package,'" Smith said. "It was pretty clear."

EVERY AMERICAN SHOULD GET MAD ABOUT THIS!

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Mold can cause bodily infections

It can take your breath away

Examiner.com

Mold can have various adverse effects depending on the type, said allergist Dr. Alvin Sanico, medical director of the Asthma Sinus Allergy Program at Greater Baltimore Medical Center.

Spores can be toxic or provoke an allergic reaction or asthma attack.

"Outdoors, molds grow in

leaves on the ground. That's why in the fall the counts go up," he said. "Indoors, they can grow in any damp areas, usually in basements where there has been flooding."

For those with weakened immune systems, he said, mold spores can take root in their bodies and cause infections of the lungs, skin or even blood, but those cases are rare, Sanico said.

Mold does not affect most people, unless they have had a severe exposure at some point, Sanico said.

Mold in the home can be treated using a weak bleach

solution but may require removing drywall or affected materials.

Dr. David Kerxton provides the American Academy of Allergy Asthma and Immunology with mold counts, but they are estimates.

"In this area, no one cares about mold counts," the Baltimore allergist said, and it takes more than four hours to count the much smaller spores.

For Thursday's report, he estimated 7,500 mold spore particles, a "high" level.

There are thousands of varie-

ties of mold, but only a few cause allergic reactions, according to the Mayo Clinic Web site.

More than 80 percent of people with respiratory allergy symptoms are sensitive to fungi, according to the Centers for Disease Control and Prevention, and 93 percent of cases of chronic rhinosinusitis are linked to fungus.