

Insurance suit to remain in federal court

By JOE GYAN JR., Advocate New Orleans bureau (4/3/08)

NEW ORLEANS — A sweeping anti-trust lawsuit that accuses some of the country's biggest insurance firms of plotting to low-ball Louisiana policyholders after hurricanes Katrina and Rita does not belong in state court, a federal judge ruled Wednesday.

A lawyer for new state Attorney General James "Buddy" Caldwell argued during a hearing to have the suit sent back to Orleans Parish Civil District Court where then-Attorney General Charles Foti filed it, but U.S. District Judge Jay Zainey said the case will stay in federal court where the defendants had it moved.

Caldwell did not attend the hearing, but his spokeswoman Tammi Arender was in the courtroom and said after the proceeding that the state could ask the 5th U.S. Circuit Court of Appeals in New Orleans to review Zainey's decision.

Foti teamed up with private lawyers to file the case in November, just days after he was voted out of office. Arender said Caldwell, who took office in January, has not decided whether to continue with the case.

The suit accuses Allstate Insurance Co., State Farm Fire and Casualty Co. and other insurers of conspiring to manipulate damage estimates and shortchange policyholders after the 2005 storms. The Insurance Information Institute

trade group says the accusations are baseless.

The key issue that Zainey and lawyers for both sides focused on Wednesday was whether the suit is a class action that the federal Class Action Fairness Act of 2005, or CAFA, mandate be tried in federal court. Neither side could agree on that issue.

"It's plainly a class action, or at least a mass action," former U.S. Attorney Harry Rosenberg, who argued on behalf of the defendants, told the judge. "This is the classic class action. That's what triggers (federal) jurisdiction."

"Piercing the veil of the pleadings, this is not a class action," Steve Herman, one of Caldwell's attorneys, countered.

Herman argued that the state is the plaintiff in the case, not policyholders. Zainey pressed Herman on that issue.

"If you win, where does the money go?" the judge asked.

"It's not clear the money, if any, would go to them," Herman said of policyholders. "It is not clear in my mind how the recovery, if any, would be allocated or disbursed."

Herman pointed out that the money the state received after suing big tobacco companies "didn't go to smokers."

If it is proven that a New Orleans policyholder was "ripped off" by an insurance company, Zainey asked, why should the damages awarded go into the state's coffers.

"The court is right," Rosenberg said. "If they're going to recover for the state fisc (state treasury), then the policyholders are left out."

Rosenberg called the state a "nominal party at best" and said the "real" parties in interest are the policyholders. Herman countered that the state has an interest in the health and welfare of its citizens.

"That does not rob or strip the state from being the real party of interest," he said.

The suit alleges six insurance companies and four firms that provide services to insurers violated the Louisiana Monopolies Act.

In addition to Allstate and State Farm, the insurers are Farmers Insurance Exchange; Standard Fire Insurance Co., commonly known as Travelers; USAA Casualty Insurance Co.; and Lafayette Insurance Co., a division of United Fire Group.

The other defendants are claims-adjusting software manufacturers Marshall & Swift/Boeckh LLC and Xactware Solutions Inc.; Xactware's parent com-

pany, insurance data collector Insurance Services Office Inc.; and McKinsey & Co., an international consulting firm that has advised many major insurance companies on practices to adopt in computing claims.

The suit accuses Allstate Insurance Co., State Farm Fire and Casualty Co. and other insurers of conspiring to manipulate damage estimates and shortchange policyholders after the 2005 storms.

The focus of the hearing was whether or not the case is a class action. The plaintiff in the case is the state of Louisiana, not the policyholders.

The plaintiffs preferred the case stay in the State court system while the Defendants (insurers and their accomplices) wanted it to be in the Federal courts, probably because the U.S. 5th Circuit Court of Appeals would bend over backwards for them if and when the time comes.