

New Orleans whistleblower lawsuit reinstated

by Rebecca Mowbray, The Times-Picayune
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The U.S. Fifth Circuit Court of Appeals reinstated a New Orleans whistleblower lawsuit Wednesday alleging that insurers overbilled the National Flood Insurance Program after Hurricane Katrina, but severed State Farm and Allstate from the proceeding.

"We are going to get justice against the six or seven insurance companies that were not thrown out. I think we will win this case, and it will shame the U.S. government to get off its you-know-what and go after Allstate and State Farm, who are probably the biggest abusers out there," said Allan Kanner, the attorney who brought the suit.

The complaint, filed under seal in August 2006 by a group of former insurance adjusters known as the Branch Consultants, alleges that insurers overstated damages from flooding and understated damages from wind so that they could shift a greater share of the burden of paying for the storm onto taxpayers. Private insurers are supposed to cover wind damage on homeowners insurance policies, and the federal government covers flood damage through policies in the National Flood Insurance Program.

The Branch suit was dismissed in October 2007 when a judge ruled that the claims of defrauding the federal government were already covered by a rival whistleblower suit in Mississippi known as the Rigsby suit that was filed under seal four months earlier.

The Fifth Circuit's mixed-bag ruling cut the state's two largest insurers from the case because they were specifically named in Rigsby but allows the Branch suit to live another day.

"The potential for fraud exists in any government program and, certainly, in the situation presented by Hurricane Katrina where mass amounts of federal funds were expended in emergency and less-controlled conditions. In combing through a host of (private) insurers and identifying those specific insurers and adjusting firms that may have committed wind/water fraud, Branch likely revealed instances of fraud that would have otherwise eluded the government," the opinion reads.

Patrick Burns, a spokesman for the non-profit group Taxpayers Against Fraud, which supports whistleblower efforts, hailed the ruling because it said that one whistleblower suit cannot be a proxy for all claims on a subject, and recognizes that different claims may

be needed to help the government ferret out fraud by different companies.

Whistleblower suits are filed by individuals with direct knowledge of fraud on behalf of the government under a civil law called the False Claims Act. Suits are filed secretly to give the government time to evaluate the claims and decide whether the U.S. Department of Justice should get involved and take over prosecution. In the Branch case, the U.S. Attorney's Office has so far declined to get involved, but is free to jump in at any time.

A qui tam suit, as this particular whistleblower suit is known, can provide handsome rewards to those who tip off the government to fraud, paying those who sought to protect taxpayers anywhere from 15 to 30 percent of what is recovered from defendants. In this case, the amount could be huge, because the Branch Consultants allege billions of dollars of potential rip-offs by insurers.

Burns predicted that courts may be particularly interested in whistleblower suits at this time because the country is tired of corporate fraud after watching the sub-prime mortgage crisis bring down the economy, Bernard Madoff's alleged \$50 billion Ponzi scheme, and banks and financial services companies accept bailout money from the government only to continue awarding lavish bonuses.



Whistleblower Suit

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But whether the Branch suit has any teeth after two insurers who represent more than half of the state's homeowners insurance were cut from the proceedings remains to be seen. The Branch Consultants built the suit by re-assessing damage at several hundred homes after Katrina and comparing those estimates to what the flood program and homeowners insurance paid, and selected 57 addresses to name in the suit. Cutting State Farm and Allstate from the suit will leave the yet Branch adjusters, whose identity remains secret, with a smaller sample on which to pin their case.

Kanner said that the Branch Consultants have enough data to develop new samples against the remaining defendants in the case, and predicted that State Farm and Allstate would be put under the microscope if Branch is successful. "Politically, I think it's not going to be possible for Allstate and State Farm to hide," Kanner said.

Insurers remaining in the suit are the Standard Fire Insurance Co., better known as Travelers; Liberty Mutual Fire Insurance Co.; American National Property & Casualty Insurance Co., better known as ANPAC; Fidelity National Property and Casualty

Co.; Fidelity National Insurance Co., and American Reliable. The suit also names adjusting and claims software companies Pilot Catastrophe Services Inc., Crawford & Co., Allied Claims, NCA Group Inc., Simsol Insurance Services Inc., and Colonial Claims Corp.

Greg LaCost, an attorney who is assistant vice president of government relations at the Property Casualty Insurers Association of America, predicted that the suit would come up empty-handed. "There is no smoking gun here. Carriers went out, and told their people to adjust claims," he said.

Allstate said it was "pleased" at the ruling, and noted that the company had also been dismissed from Rigsby last year. In theory, that should put Allstate in the clear, but the Fifth Circuit said it expressed no opinion on the "yet-unpresented question" as to whether Branch would be able to sue Allstate or any other company that was severed from the first-filed Rigsby suit.

State Farm also said it was "pleased" with the Branch ruling and said that its attorneys were preparing for a May 20 evidentiary hearing in Rigsby.

The future of the Rigsby suit had also been in doubt because it was filed by attorney Richard "Dickie" Scruggs, who is now in jail for attempting to bribe a judge, but the suit is continuing with other lawyers.

The Branch case will proceed in U.S. District Court in New Orleans in Judge Peter Beer's chambers.

The three-judge panel at the Fifth Circuit who reinstated the case was made up of Fortunato P. Benavides, a Texas judge nominated by President Bill Clinton in 1994; and Leslie H. Southwick and Catharina Haynes, Texas judges who were nominated by President George W. Bush.



Score one for the home team!