

## STATE FARM: Mediation maneuvers

They can be an unsettling experience

By ANITA LEE  
SUN HERALD

Lee and Diane Bennett walked into a mediation session with State Farm Fire & Casualty Co. confident they could settle their Hurricane Katrina insurance claim based on evidence that wind all but destroyed their Diamondhead home before water washed it away.

They walked out three hours later, defeated and humiliated.

They didn't feel the State Farm representatives considered their briefcase full of information documenting wind damage, instead sticking to a report that Katrina's maximum sustained winds were around 100 miles per hour in their area.

State Farm representative Fraser Engerman said company representatives keep an open mind in mediation. "We do not go in there with any predetermined notion," he said. "We're going in there willing to listen and willing to discuss, absolutely."

Insurance companies and state Insurance Commis-

sioner George Dale are shepherding the Bennetts and other homeowners into mediation to settle disputed Katrina claims. Mediation, they say, is worth a try before proceeding to the courthouse.

It is considered less acrimonious, less costly and far less time-consuming for all concerned.

Dale's office trumpets the number of cases settled through the mediation process, 85 percent according to the latest figures. But that percentage tells only half the story. Nobody can or will say how much money policyholders are settling for.

Despite requests from the media and consumers, Dale will not ask the American Arbitration Association, which is administering the program, to track settlement amounts. He said the program was modeled after one in Florida and settlement amounts weren't tracked there, either.

Bennett and several other South Diamondhead residents, whose homes were battered by wind and an unprecedented storm surge, say they are being offered pennies on the dollar for wind damage, with insurers sticking to their premise that storm surge ultimately destroyed the homes, no matter what evidence policyholders present to the con-

trary.

The Bennetts had the distinct impression State Farm representatives had decided before the session started how much the company would offer on a policy that provided \$438,000 in coverage.

The company's final offer: \$30,000, or 6.6 percent of the policy's value.

The Bennetts turned it down. They have received no money from State Farm for the house or its contents.

"We were up against professionals who were protecting the company's money," said Lee Bennett, Hancock County's chief property appraiser. "We felt like we were kind of overmatched, basically. It wasn't an even fight. I guess I should have taken a professional adjuster with me."

"As far as the process, I didn't feel like it was an equitable match."

Dale believes in the mediation process, which has been around for centuries. By all accounts, mediation works for many policyholders, especially those who disagree over the amount - rather than the cause - of damage.

"Let's look at it another way," Dale said. "What's the alternative? Mediation is another way to try to

resolve these differences. It's not going to work for everybody." If mediation fails, he said, policyholders can still pursue lawsuits.

"Overall, the mediation program, I'm pleased with it," Dale said. "Any time anybody gets some additional money and gets their claim closed, I consider it a success."

Mediator Ed Prisock also was able to provide some insight into how wind vs. water claims are working out in mediation.

"Those are the hard ones," said Prisock, a retired Chancery judge from Louisville, Miss., who had mediated about 15 cases when he was interviewed recently. He estimates a settlement was reached in about half the wind vs. water mediations.

Prisock said, "Some people might be willing to take a lower amount and say, 'I'm ready to get on with my life.'"

Prisock generally finds the mediation experience rewarding because he is able to help policyholders get past their emotions to the issues at hand. Even policyholders who walk away without a settlement are often complimentary of the mediators and the job they do.

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## Mediation Maneuvers (continued from page 2)

The insurance companies pay all fees associated with the mediation program.

Not surprisingly, attorneys suing insurance companies on behalf of policyholders are some of the program's biggest detractors.

"These mediations are a hoax," said Zach Scruggs, a member of the Scruggs Katrina Group, which has signed up thousands of clients for litigation. "I think they are a fraud. The companies, particularly State Farm, have no intention of settling these cases for any more than pennies on the dollar. And their pattern and practice is to pay nothing on the slab case, not even pennies.

"If the wind got there first and caused the damage, it doesn't matter what happened after that and that is common insurance law in Mississippi." Scruggs said insurers count on the fact that most homeowners are not well-versed in the law.

For their part, State Farm and other insurers say they are considering each claim based on its merits and paying what is due under their policies for wind damage. State Farm representatives say they do take into account documentation presented by policyholders.

State Farm policyholders Alvin and Lillie Lassen went to mediation Wednesday afternoon with three mete-

orological and engineering reports showing tornadoes destroyed their South Diamondhead home before the water arrived. In mediation, they were prepared to settle for \$150,000 of their \$558,000 policy value, which would have made them whole when coupled with their flood reimbursement.

The State Farm representative, they said, was a very abrasive young woman who offered no documentation to bolster her contention that water destroyed their home. Instead, she referred to the National Oceanographic and Atmospheric Administration report that put peak wind speeds at no more 110 miles per hour in their area. (NOAA noted in its December Tropical Cyclone Report on Katrina that wind gauge instruments on the ground failed before peak winds arrived.)

"She said there were no tornadoes," Al Lassen said. "We just wanted to be whole, but she accused us of trying to make money."

She offered the Lassens \$15,000, then \$28,000 and, finally \$50,000 - 9 percent of their homeowner policy's value.

They refused each offer, Al Lassen said, but did

ask that she put the final offer in writing. She refused.

"No matter what we said, they stuck to their guns," Lassen concluded. "And their abrasive and accusatory attitude are unbelievable.

"We're very, very disturbed right now. The whole process is bogus."

State Farm's Engerman said he could not discuss what documentation the company relies on because mediation conferences are negotiations that could lead to litigation, but he took issue with the Lassens' and the Bennetts' feeling that they were treated rudely.

"We are confident that our employees handle themselves in a courteous and professional manner in these mediation sessions," he said, "and we expect our employees to conduct themselves in a professional and courteous manner in all mediation sessions."



From POA's Mailbag:

Dear POA:

Why is POA so fixated on political issues? I don't like politics and like politicians even less. Can you just stick to the topic of insurance?

Barbara, Houston, TX

Dear Barbara:

You just cannot discuss insurance without discussing politics. They are closely intertwined and cannot be separated because insurance is something that is regulated by States: legislators, and insurance commissioners. The statutes are interpreted by judges — who are either appointed by political people or elected.

The propensity of these groups (politicians, regulators and judges) to serve as insurance industry lap dogs and act against the best interest of policyholders depends largely on their political party and who bought them by way of campaign contributions.

As a *general rule*, Republicans are more pro-insurance industry and have given insurers the green light to commit bad faith, price gouging, fraud, lowball tactics, etc... without penalties.

We would love not to discuss politics but we need to bring an understanding to those who struggle to understand just why insurers are allowed to violate the policies they sell.

Regards,

Policyholders of America