

## Farmers Insurance Fined \$2M in Calif.

AP

Farmers Insurance refunded \$1.4 million to thousands of California homeowners and agreed to pay \$2 million in penalties to settle complaints the company overcharged policyholders, officials said.

The settlement came after a California Department of Insurance investigation found the insurer was classifying some homes as having a high fire risk when those homes should have been classified as having a lower fire risk, said department spokeswoman Jennifer Kerns on Wednesday.

The probe, which was trig-

gered by consumer complaints, also found that Farmers lacked the proper guidelines to determine whether to renew a policyholder based on the numbers of times that person filed a claim, Kerns said.

Such a guideline is needed to prevent "use it and lose it," a practice that regulators said had led many Californians to lose homeowners insurance after filing legitimate damage claims on their houses.

Farmers denied wrongdoing, saying a computer error caused the company to overcharge 6,000 customers.

"We caught it when they caught it," Farmers spokesman Jerry Davies said.

"We fixed the computer system four years ago, all the customers were paid and have received apologies," he said.

As part of the settlement, Farmers agreed to work with the department to develop better guidelines to assess a home's fire risk and determine whether or not to cancel policies.

**Farmers claims a "computer error" is to blame.**

## Bill to lower insurance industry support for earthquake coverage

AP

SACRAMENTO—California homeowners who buy earthquake insurance through a state-run authority could see their premiums rise under a bill that recently passed an Assembly committee over opposition from the state treasurer and consumer advocates.

When the California Earthquake Authority was established in 1996 two years after the Northridge earthquake, participating insurance companies were required to provide \$2.2 billion to help underwrite it. They were to keep that money in reserve through Dec. 1, 2008.

That arrangement is about to expire and insurance companies want out of it. Sen. Mike Machado, D-Linden, wants to replace it with a new one in which insurance companies would be required to keep \$1.2

billion available to the authority for up to 12 years. Machado said most insurers don't want to provide earthquake coverage themselves.

If passed, the result could be higher rates for the more than 760,000 homeowners who have quake coverage through the authority, California's largest provider of earthquake insurance.

The legislation was approved by the Assembly Appropriations Committee, even as some committee members expressed reservations about the change and indicated they might oppose it when the bill comes up for a vote in the full Assembly.

"The chief policy objective should not be, 'What legislation does the industry support?'" Doug Heller, executive director of the Foundation for Taxpayer and Consumer Rights, a Santa Monica-based consumer group, told the committee.

"The only question (should be), 'What makes the CEA more stable and CEA policies more affordable?' This pro-

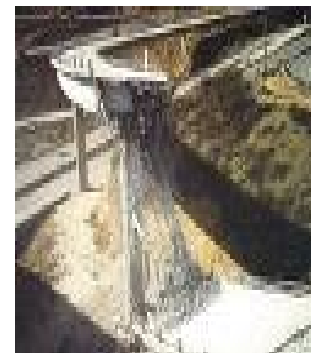
posal goes in the opposite direction."

State Treasurer Bill Lockyer predicted the deal would force the California Earthquake Authority to raise its rates, which now average about \$700 a year, by another 8.5 percent.

He urged lawmakers to extend the industry's \$2.2 billion obligation until the authority has \$6 billion in cash reserves. Currently it has only \$2.7 billion, he said.

The authority has about 72 percent of the homeowner earthquake insurance market in California.

Only about 13 percent of homeowners have earthquake coverage, either through the authority or a private insurer. Those going without coverage apparently prefer to run the risk of major losses rather than pay rates that can run several thousand dollars a year, depending on the location, size, value, age and construction of the house.



### FL Insurers Breaking New State Law to Avoid Rate Cuts

POA



Gov. Charlie Crist thinks that some insurers operating in Florida may be deliberately breaking a new state law that requires them to buy cheaper reinsurance and pass the savings on to consumers.

Crist believes insurers are dodging ordered rate reductions by buying more private backup coverage than they need. Crist has been steadfast in his rate reduction goal and that has bothered insurers to no end.

The Florida Legislature passed the law in January to lower wind coverage premiums, by increasing the state's Hurricane Catastro-

phe Fund so it could cover more of the underlying risk for big storms. That backup (or reinsurance) coverage is provided at a lower rate than private reinsurance. Insurers were told to pass those savings to consumers.

Many companies aren't doing that, and are filing for higher rates - basically thumbing their noses at the Governor.

State insurance officials estimated that the new law would yield an average savings of 24 percent. Since then, many insurers have not only pocketed savings that were to be passed onto customers, they filed for

premium increases. USAA, for example, has filed a request for a statewide average rate increase of nearly 54 percent.

Floridians had been clamoring for relief from homeowners insurance rates that have dramatically increased - more than doubling for many customers - after back-to-back bad hurricane seasons in 2004 and 2005.

The industry pulled out its predictable boilerplate response to all of the hoopla by claiming that Florida's "hostile" position makes insurance companies less likely to do business in Florida.

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### Ga. Court Orders Judgment for Insurer on Negligence Claim

Harris Martin—Columns Mold



ATLANTA — Georgia’s Court of Appeals on July 30 ordered summary judgment for an insurance carrier after finding the carrier had no duty to approve a home contractor or warn residents of the possibility of mold after storm damage was repaired. *GuideOne Mutual Insurance Co. v. Hunter, et al.*, No. A07A1158 (Ga. Ct. App.).

The appellate court reversed a trial court order denying GuideOne Mutual Insurance Co.’s motion for summary judgment on a negligent repair cause of action brought by tenants of GuideOne’s insured.

Michael and Melissa Hunter sued landlord Christopher Simpson and GuideOne in 2003, claiming illness from mold that appeared after the house was damaged in a November 2002 storm.

The Court of Appeals said in its case summary that GuideOne sent adjuster Randy Harrison to investigate the storm damage. He was accompanied by a representative of J&G Metal Tops, Simpson’s chosen roofing contractor. GuideOne paid J&G \$6,700 for repairs to the roof, drywall and carpets.

The Hunters say they began to experience illnesses after the repairs were made and retained American Contamination Control to test the house for mold in January 2003. ACC reported high levels of mold from moisture intrusion due to a roof leak. GuideOne eventually paid ACC \$38,000 for mold remediation and repairs.

The Hunters sued Simpson and GuideOne, however, seeking damages for alleged negligence and breach of contract. In asserting the breach-of-contract action, the Hunters claimed they were third-party beneficiaries of the home insurance contract.

GuideOne, meanwhile, filed a separate declaratory judgment action, contending that the policy’s rental exclusion precluded coverage during the time the Hunters rented the home from Simpson. That court agreed, granting summary judgment to the insurer.

Following that ruling, the trial court in this case granted summary judgment to GuideOne on the Hunters’ breach of contract claim, but denied GuideOne’s motion for summary judgment

on the negligent repair claim, finding issues of fact as to whether GuideOne was negligent in recommending repairs, in failing to warn the Hunters or Simpson, or in failing to test for mold.

In reversing, the Court of Appeals found no evidence that Simpson relied on GuideOne to choose a contractor or that GuideOne assumed a voluntary duty to delegate a contractor.

“The evidence, viewed in a light most favorable to the Hunters, does not show that GuideOne through Harrison undertook to do anything more than inspect the property in discharge of its obligation to pay the actual cash value of damaged property or to defray the repair and replacement costs,” the Court of Appeals concluded.

John M. Hawkins of Weinberg, Wheeler, Hudgins, Gunn & Dial in Atlanta represented GuideOne Mutual Insurance Co.

Eugene C. Brooks IV of Savannah and Gerald Davidson Jr. of Mahaffey Pickens Tucker in Lawrenceville, Ga., represented appellees Simpson and the Hunters.

#### A NEW LOW:

### PROGRESSIVE HIRES INVESTIGATORS TO SPY ON POLICYHOLDERS IN CHURCH POA



Georgia’s Insurance Commissioner has begun an investigation of Progressive Insurance for allegedly spying on policyholders who filed a suit. State investigators say Progressive sent private investigators into a church confessional to spy on a couple — Bill and Leandra Pitts — who were involved in a car crash and later sued the company.

Insurance commissioner, John

Oxendine, ordered a market conduct examination into recent allegations of invasion of privacy, fraud and other misdeeds by Progressive Insurance Co. and ordered Progressive to preserve "all documents, data and tangible things related to all losses or claims incurred or reported involving or related to Georgia policyholders since Jan. 1, 2003.

The two private detectives allegedly posed as a married couple wanting to join the church. They weaseled their way into a private confessional at a member’s home and recorded potentially embarrassing details from several people there.

The company’s president issued an apology on Progressive’s website.

Company spokesman Shawn Fergus did not return POA’s calls.

## Foti sues insurers over Katrina flood exemptions



**He's da Man!**

**Louisiana AG Charles Foti, Jr. says Louisiana is entitled to recover billions of dollars from virtually all of the carriers operating in the region because the insurers should have paid but didn't. Their refusal to pay shifted the financial burden to the Road Home program. This program assist recipients with recovery efforts.**

Attorney General Charles Foti has filed a bold and broad class-action lawsuit against nearly every private insurance company in the region, claiming they misused flood exemptions in their homeowners policies to deny claims for about 150,000 hurricane victims, thereby shifting the burden to the Road Home program.

"The state is thus entitled to recover billions of dollars in funds expended or to be expended under the Road Home program to assist recipients with their recovery efforts, which should have been paid for in whole or in part by the insurance company defendants," reads the lawsuit filed last week in Orleans Parish Civil District Court.

The suit claims that the insurance companies drafted "vague, ambiguous and unclear limitations on coverage, thereby violating the rule that exclusions must be clearly and explicitly drafted." The state, however, has based its sweeping claims on an argument already knocked down by the federal courts: that all damage from the 2005 hurricanes be declared the result of "windstorm," rather than flooding.

The suit contends that insurance companies sold the same basic policies to levee-protected New Orleanians that they sell throughout the country – without explicitly excluding hurricane damage, storm surge or flooding from levee failures. And so they "knew or should have known that their policies as drafted provided coverage for natural as well as man-made or third-party fault occurrences asso-

ciated with hurricanes," the suit says.

That argument fell flat last month before the 5th U.S. Circuit Court of Appeals, which ruled a flood is a flood, regardless of the cause. The ruling reversed a decision by U.S. District Judge Stanwood Duval that said insurers, other than State Farm Fire & Casualty Co., had ambiguous policies regarding flooding caused by failed levees.

### *Wants it in state court*

On Thursday, Foti, in a written response to questions, said the case belongs in state courts, which have been more favorable to the wind vs. flood argument than federal courts have. Two cases that have reached the state appeals court level so far have upheld the idea that insurance policies were too ambiguous about coverage of floods caused by levee failure or storm surge.

If the Louisiana Supreme Court upholds that position in those cases, "the industry will face billions of dollars of claims by both the insureds and the Road Home," Foti said.

The case also tests a new legal argument by alleging that insurance companies directed adjusters to maximize the amount of damage from flooding – covered by federal flood insurance – and minimize the damage attributable to wind, which private insurers must cover. In that scenario, if homeowners lacked enough flood insurance, such a shift by adjusters would have put a heavier burden on the Road Home pro-

gram.

"The general trend we have observed for the overwhelming majority of insured is that the flood payments did not adequately compensate the victims of the storm for their property losses," Foti said. "Had the homeowners and wind insurers paid their limits of coverage, the insured would have been made whole. But they were not."

While daring, the attorney general's lawsuit comes late in the game, nearly two years after Mississippi Attorney General Jim Hood filed suit against insurers. And the Louisiana lawsuit's overarching scope and reliance on indiscriminate generalizations worries even those who believe the state should sue insurers to recover Road Home funds.

"I hope he (Foti) gets as much money for the state as we deserve; the insurance companies, they're bad eggs," said Allan Kanner, who is coordinating insurance litigation at the Louisiana Association for Justice, formerly the state trial lawyers association. "But you have to take them on with your A-game every day. And I would have hoped our chief legal officer would have had more of a scalpel than a shotgun."

### *Time running out*

The broad-brush strategy could result more from logistics than legal logic: Though state officials identified potential insurance underpayments more than a year ago, the attorney general agreed to take on the cases less than a

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Foti sues insurers....

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month ago, and so probably wouldn't have had the time to prepare a more specifically targeted case before meeting Friday's filing deadline.

The legal statute of limitations for Katrina claims was extended from one year to two by legislative act and insurers signed agreements to abide by it.

Foti said the lawsuit is still in the early stages, and more details will come out during the course of pre-trial motions and during the trial itself.

Meanwhile, the state made no effort to negotiate a settlement or gather information from insurers despite recent offers of cooperation from the companies, said insurance company industry spokesman Greg LaCost.

"The carriers approached me last month and said, 'We're willing to meet with the AG,' and none of that happened. There was no outreach as far as I know," LaCost said. "Now the state is sending this message by filing the lawsuit that

every single one of these carriers wrongfully withheld money, which is clearly not the case."

LaCost questioned the basis the attorney general had for such strong claims against all 168 defendant companies. First, he wondered how the suit could claim billions of dollars in underpayments when the LRA's own analysis showed insurance payments were less than \$900 million below anticipated levels. Also, the LRA analysis warned that it would be difficult to determine how much of the lower-than-expected insurance payments were because of failures by homeowners to update coverage levels as their home values increased.

Shifting the responsibility

"How much investigating did the AG's office do? Did they interview all of these applicants?" LaCost said.

He said the whole point of the Road Home program was to fill in the gaps when homeowners failed to fully insure

their losses, for whatever reason. The lawsuit, he said, now assumes any such gap in coverage stems from insurance company wrongdoing rather than homeowners simply not buying enough coverage.

The attorney general apparently named as defendants every major casualty insurer in the state, including big national and international firms such as Allstate Insurance Co., Travelers Insurance Co., State Farm General Insurance Co., Hartford Insurance Group, Fireman's Fund Insurance Co., Lloyd's of London, Farmers Home Group and Hancock Metlife Insurance Agency.

Among the Louisiana companies named is Louisiana Citizens Property Insurance Group, the state-funded insurer of last resort.



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Newsday Editorial:

Kudos to state on insurance problem

Insurers are known to use fear tactics... In NY, like in many other states, insurers threaten to drop homeowners policies if customers doesn't buy their more lucrative auto policies.

As far as the state Insurance Department is concerned, you're not in good hands with Allstate. The same for Liberty Mutual, the second insurer accused of breaking a law aimed at protecting consumers from coercive sales tactics. As State Insurance Superintendent Eric Dinallo demanded, the firms must stop exploiting fears over losing homeowner coverage to sell auto insurance policies.

Dinallo deserves kudos for responding quickly to complaints from consumers after Newsday revealed Allstate and Liberty Mutual's decisions to cut their numbers of homeowner insurance policies. The firms, in an

industry still reeling from losses due to Katrina, Andrew and other hurricanes, fear that Long Island, New York City and Westchester are well overdue for a catastrophic storm.

This page has defended the insurers' right to reduce their exposure - as long as they follow laws that bar forcing consumers to buy one policy if they want another and that limit the number of homeowners whose coverage can be dropped in any given year. The state, as it should, has found evidence of the former and remains vigilant on the latter.

As a result of the state's diligence, Liberty Mutual has reinstated 380 home-

owner policies and is reviewing others that were canceled. Overall, more than 15,500 policyholders have found themselves scrambling over the past year, after receiving nonrenewal notices from several insurers. That's scary, considering that Long Island has hundreds of miles of coastline, and a home is usually a family's most valuable asset.

Now, regulators must do their best to assure that homeowners have other sources of coverage, and at reasonable rates. Families can't be left high and dry the next time they are down and damaged if - or, as forecasters say, when - the next Big One hits.

S.C.: Audit Requested of Insurance Rates

AP

COLUMBIA, S.C. - A state Senate leader is asking the Legislative Audit Council to review practices at the state Insurance Department that may have let insurance companies raise rates without adequate oversight.

Senate President Pro Tem Glenn McConnell, R-

Charleston, asked the state watchdog group to review eight areas involving the agency.

Those include whether the agency is using accurate information and accounting for insurers' investment income properly. McConnell also wants to know whether rates for hurricane-

related insurance are accurately calculated.



SC Senator, Glenn McConnell wants an audit.

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### HOUSTON CHRONICLE EDITORIAL

#### **Brazen move Texas insurance commissioner must fight Allstate's efforts to get away with excessive rate hike.**

Judging by its latest stealth rate increase, Allstate is now employing its self-proclaimed "good hands" to pick the pocketbooks of Texas homeowners.

Defying Texas Insurance Commissioner Mike Geeslin, the company enacted a 5.9 percent increase on policies statewide this week, with an additional 2.1 percent for customers in high-risk coastal counties.

Allstate initially sought an even bigger rate increase of 6.9 percent for its 917,000 Texas policyholders but withdrew the proposal when it became clear state officials would reject it. The company then raised rates Monday and filed notice with the Texas Insurance Department 10

hours later. Geeslin and Public Insurance Counsel Rod Bordelon denounced the increase as unjustified and excessive. The commissioner issued an order disallowing the raise. Allstate lawyers then went to state district court in Austin and secured a temporary restraining order pending a hearing next week.

The insurance giant is coming across as a corporate bully trying to intimidate industry regulators while taking advantage of thousands of Texas homeowners. While an Allstate spokesman claimed actuarial data justified the new rates, the previous attempt to institute even higher increases indicates the company is trying to boost record profit levels on the backs of Lone Star customers who already pay

some of the highest insurance rates in the nation.

This isn't the first time Allstate has put revenues above its responsibilities as a good corporate citizen. The American Association of Justice recently published a study entitled "Pattern of Green 2007: How Insurance Companies Put Profits Over Policyholders." It found that in the aftermath of Hurricane Katrina, Allstate dropped nearly 5,000 Louisiana customers for allegedly not showing intent to repair their properties. An investigation by the state's insurance officials found the cancellations were unjustified. In Texas, Allstate and five other insurers canceled more than 100,000 homeowner policies to avoid risk.

Even with 2005's onslaught of hurricanes, property casualty insurers reaped a record profit of more than \$44 billion in that year. Since then, profits have

steadily climbed to \$63.7 billion last year. Rather than return some of its largesse to customers, Allstate is reaching for more.

Having been hoodwinked once, Commissioner Geeslin prudently revoked Allstate's right to use a file and use system to implement future rate increases without prior approval by the state. Counsel Bordelon is calling for \$25,000 penalties for each homeowner policy Allstate sells with the new rates.

With its latest grab, Allstate has breached trust both with Texas insurance regulators and its customers. Rather than just a slap on those well-known hands, it deserves serious penalties, including mandated refunds and rate rollbacks.