

The Policyholder Advocate



Policyholders of America

October, 2007 issue

BAD LAW

Appeals court strips more coverage from policies.

Wind damage now not covered if flooding also occurred.

POA



The 5th Circuit court (a federal appeals court based in New Orleans) has dealt another blow to coastal homeowners, nationwide. They ruled in favor of the insurance company (Nationwide) that wind damage is not covered under the policy if it happens to coincide with storm surge.

This ruling has insurance companies “high-fiving” one another because the decision will

be cited in an effort to dodge coverage of any storm loss that occurs anywhere in the United States.

This most recent ruling negates the ruling given by U.S. District Judge L.T. Senter more than a year ago, in the case known as Leonard v. Nationwide, the first Hurricane Katrina case to be tried in federal court in Gulfport, Mississippi. In the “Leonard” case, Judge Senter said that the policy language dealing with “anti-concurrent causation”¹ was “ambiguous and unenforceable”. After Senter’s ruling, insurers scrambled to settle similar claims.

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TESTING A PROPERTY? The ups and downs of mold testing

Testing your property may actually create a paper trail that could negatively impact your property value if and when you elect to sell your property. Why? Because most states require the seller disclose known defects or environmental problems prior to closing.

There is a way to avoid creating an unwanted trail of evidence and property owners need to be mindful of the options that exist and select the method of testing that is most appropriate.

Dodging the bullet

If you fit into any of these categories, you may want to test without the paper trail:

- ◆ suspicious that mold is causing health concerns and/or need to weed out other possible causes,

- ◆ need to determine a proper scope of repairs after water damage but before an insurance claim is filed, or
- ◆ currently listing or considering listing your property for sale.

Most analytical labs require an address of the subject property, leaving in the wake, a lasting piece of evidence. And, if you retain the services of a professional testing company, they too retain records for an extended period of time.

A way around the evidence trail is to (a) conduct your own sampling, and (b) send the sample(s) to a lab that does not require the address of the subject property.

There’s no denying that so many homeowners do not test their properties be-

cause of the potential market value hit a positive result may cause — even at the risk of continued health concerns. It is for this reason, POA negotiated with a leading lab a testing option that does not require a property address.

Are positive test results still required for disclosure purposes? Yes, however without a paper trail, the only one who knows the result is you. POA does not endorse or recommend nondisclosure of a known problem however it is also not our role to play God.

[CLICK HERE](#) for discounted testing without the paper trail.

Documentation happens

Sometimes, documentation (and a paper trail) is not only necessary, it is beneficial.

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Appeals court strips more coverage...

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Nationwide promptly appealed Senter's ruling – taking the case to a more insurance-friendly audience sitting on the 5th Circuit. There, they got their wish list granted.

So, what does this all mean for you? It's simple: if you are to be paid for damage sustained in a storm, you must argue and prove that all damage was caused exclusively by wind BEFORE the flooding occurred.

How exactly does one PROVE wind did all the damage? In layman's terms, the homeowner or his/her agent must disregard any and all evacuation orders, put their lives at risk and document how and when the damage happened. Those who stay behind, while everyone else evacuates, will be called upon for their sworn testimony that all damage sustained to a property occurred because of wind, not rising water. All the better if photos are taken of the damage before and after the storm surge. (POA actually offers payment to those who cannot or will not evacuate and are willing to document a damage timeline.)

If a flood policy is in effect, it

covers up to \$250,000 in damage but that is usually woefully insufficient coverage for many coastal properties.

The office of U.S. Representative Gene Taylor (D-MS) issued a statement following the appellate ruling, saying the ruling strengthens the case for the Congressman's multi-peril policy legislation which will be debated by Congress this session.

According to Brian Martin, Rep. Taylor's policy director, "The appeals court is saying it is OK for a company to sell a policy that is likely to be worthless for a major hurricane if you also have flood risk. If the wind insurance does not cover wind damage, that means it is impossible to buy insurance and know that you are covered."

Martin goes on to say, "The flood policy is not supposed to pay for wind damage. Congress should ban any company with an anti-concurrent causation clause from participating in the flood program. I think this also helps our case that the anti-trust exemption has to go and the federal government needs to take over regulation of insur-

ance. Consumers and taxpayers need federal intervention."

Melinda Ballard, POA's president, agrees but noted another dangerous fall-out, "The ruling also forces many people to disregard evacuation orders made prior to a hurricane's landfall. Property owners who cannot afford to take the loss will stay behind to document the damage timeline in order to force insurers to honor the policies. Whether or not the 5th Circuit realizes it, their ruling has terrible consequences."

[CLICK HERE FOR THE RULING](#)

¹ Anti-concurrent causation is a provision in the policy designed to defeat or nullify coverage. The typical language in this provision leads like this: "We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss."

Rep. Taylor believes any insurer whose policies contain this provision should be banned from participating in the flood program. (Insurers who sell and service flood policies get paid nearly 1/3 of each premium dollar collected from the National Flood Program. This is gravy for participating insurers.

IN PLAIN LANGUAGE

What does this ruling mean for you?

If you are to be paid for damage sustained in a storm, you must argue and prove that all damage was caused exclusively by wind BEFORE the flooding occurred.

How do you PROVE wind did all the damage?

The homeowner or his/her agent must disregard any and all evacuation orders, put their lives at risk and document how and when the damage happened. Those who stay behind, while everyone else evacuates, will be called upon for their sworn testimony that all damage sustained to a property occurred because of wind, not rising water. If photos are taken of the damage before and after the storm surge, all the better. (POA actually offers payment to those who cannot or will not evacuate and are willing to document a damage timeline.)

But, because of a Louisiana Appeals Court ruling (see page 14) policyholders have some leverage to challenge the 5th Circuit ruling. The debate will continue.

New

Special Pricing for POA members

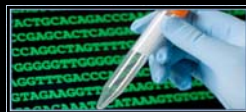
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Includes FREE 48 hour RUSH analysis & FREE FedEx Overnight Shipping

Clean Air Labs™ offers DNA analysis utilizing methods developed by the Environmental Protection Agency (EPA).

Various types of discounted analysis available. Re-

sults are completely confidential.



Visit this POA link to find out why confidentiality is critical:

http://www.policyholdersofamerica.org/before_I_test.htm

TO RECEIVE DISCOUNTED PRICES, YOU MUST IDENTIFY YOURSELF AS A POA MEMBER!

Insurance Hoax: Property insurers use secret tactics to cheat customers out of payments--as profits break records.

By David Dietz and Darrell Preston, Bloomberg Markets



Julie Tunnell remembers standing in her debris-strewn driveway when the tall man in blue jeans approached. Her northern San Diego tudor-style home had been incinerated a week earlier in the largest wildfire in California history. The blaze in October and November 2003 swept across an area 19 times the size of Manhattan, destroying 2,232 homes and killing 15 people. Now came another blow.

A representative of State Farm Mutual Automobile Insurance Co., the largest home insurer in the U.S., came to the charred remnants of Tunnell's home to tell her the company would pay just \$220,000 of the estimated \$306,000 cost of rebuilding the house.

"It was devastating; I stood there and cried," says Tunnell, 42, who teaches accounting at San Diego City College. "I felt absolutely abandoned."

Tunnell joined thousands of people in the U.S. who already knew a secret about the insurance industry: When there's a disaster, the companies homeowners count on to protect them from financial ruin routinely pay less than what policies promise. Insurers often pay 30-60 percent of the cost of rebuilding a damaged home--even when carriers assure homeowners they're fully covered, thousands of complaints with state insurance departments and civil court cases show.

Paying out less to victims of catastrophes has helped produce record profits. In the past 12 years, insurance company net income has soared--even in the wake of Hurricane Katrina, the worst natural disaster in U.S. history. Property-

casualty insurers, which cover damage to homes and cars, reported their highest- ever profit of \$73 billion last year, up 49 percent from \$49 billion in 2005, according to Highline Data LLC, a Cambridge, Massachusetts-based firm that compiles insurance industry data.

The 60 million U.S. homeowners who pay more than \$50 billion a year in insurance premiums are often disappointed when they discover insurers won't pay the full cost of rebuilding their damaged or destroyed homes. Property insurers systematically deny and reduce their policyholders' claims, according to court records in California, Florida, Illinois, Mississippi, New Hampshire and Tennessee. The insurance companies routinely refuse to pay market prices for homes and replacement contents, they use computer programs to cut payouts, they change policy coverage with no clear explanation, they ignore or alter engineering reports, and they sometimes ask their adjusters to lie to customers, court records and interviews with former employees and state regulators show. As Mississippi Republican U.S. Senator Trent Lott and thousands of other homeowners have found, insurers make low offers--or refuse to pay at all--and then dare people to fight back.

"It's despicable not to make good-faith offers to everybody," says Robert Hunter, who was Texas insurance commissioner from 1993 to '95 and is now insurance director at the Washington-based Consumer Federation of America. "Money managers have taken over this whole industry. Their eyes are not on people who are hurt but on the

bottom line for the next quarter."

The industry's drive for profit has overwhelmed its obligation to policyholders, says California Lieutenant Governor John Garamendi, a Democrat. As California's insurance commissioner from 2002 to '06, Garamendi imposed \$18.4 million in fines against carriers for mistreating customers. "There's a fundamental economic conflict between the customer and the company," he says. "That is, the company doesn't want to pay. The first commandment of insurance is, 'Thou shalt pay as little and as late as possible.'"

Although the tension between insurers and their customers has long existed, it was in the 1990s that the industry began systematically looking for ways to increase profits by streamlining claims handling. Hurricane Hugo was a major catalyst. The 1989 storm, which battered North and South Carolina, left the industry reeling from \$4.2 billion in claims. In September 1992, Allstate Corp., the second-largest U.S. home insurer, sought advice on improved efficiency from McKinsey & Co., a New York-based consulting firm that has advised many of the world's biggest corporations, according to records in at least six civil court cases.

State Farm, based in Bloomington, Illinois, and Los Angeles-based Farmers Group Inc., the third-largest home insurer in the U.S., also hired McKinsey as a consultant, court records show.

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"The industry's drive for profit has overwhelmed its obligation to policyholders."

The Gospel according to insurance: Thou shalt pay as little and as late as possible.

Insurers secret tactics to cheat ...

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McKinsey produced about 13,000 pages of documents, including PowerPoint slides, in the 1990s, for Northbrook, Illinois-based Allstate. The consulting firm developed methods for the company to become more profitable by paying out less in claims, according to videotaped evidence presented in Fayette Circuit Court in Lexington, Kentucky, in a civil case involving a 1997 car accident.

One slide McKinsey prepared for Allstate was entitled "Good Hands or Boxing Gloves," the tape of the Kentucky court hearing shows. For 57 years, Allstate has advertised its employees as the "Good Hands People," telling customers they will be well cared for in times of need. The McKinsey slides had a new twist on that slogan. When a policyholder files a claim, first make a low offer, McKinsey advised Allstate. If a client accepts the low amount, Allstate should treat the person with good hands, McKinsey said. If the customer protests or hires a lawyer, Allstate should fight back.

"If you don't take the pittance they offer, they're going to put on the boxing gloves and they're going to batter injured victims," plaintiffs attorney J. Dale Golden told Judge Thomas Clark at the May 12, 2005, hearing in which the lawyer introduced the McKinsey slides.

One McKinsey slide displayed at the Kentucky hearing featured an alligator with the caption "Sit and Wait." The slide says Allstate can discourage claimants by delaying settlements and stalling court proceedings. By postponing payments, insurance companies can hold money longer and make more on their investments-- and often wear down

clients to the point of dropping a challenge. "An alligator sits and waits," Golden told the judge, as they looked at the slide describing a reptile.

McKinsey's advice helped spark a turnaround in Allstate's finances. The company's profit rose 140 percent to \$4.99 billion in 2006, up from \$2.08 billion in 1996. Allstate lifted its income partly by paying less to its policyholders. Allstate spent 58 percent of its premium income in 2006 for claim payouts and the costs of the process compared with 79 percent in 1996, according to filings with the U.S. Securities and Exchange Commission. The payout expense, called a loss ratio, changes each year based on events such as natural disasters; overall, it's been decreasing since Allstate hired McKinsey.

Investors have noticed. Allstate's stock price jumped fourfold to \$60.95 on July 11 from its closing price on June 3, 1993, the day of its initial public offering. During the same period, the Standard & Poor's 500 Index rose threefold. State Farm's profits have doubled since 1996 to \$4.8 billion in 2006. Because State Farm is a mutual company, meaning it's owned by its policyholders, it doesn't have shares that trade publicly. "This is about as good a

stretch as I've seen," says Michael Chren, who manages \$1.5 billion at Allegiant Asset Management Co. in Palm Beach Gardens, Florida, and has followed the property-casualty industry for 20 years. The industry's performance during the past five years has been superb, even with payouts for Katrina, he says. "All the stars have been in alignment. There has been decent pricing of products and an extremely attractive and very low loss ratio."

Reducing payouts is just one way the industry has improved profits. Carriers have also raised premiums and withdrawn from storm-plagued areas such as the Gulf Coast of the U.S. and parts of Long Island, New York--to lower costs and increase income, says Amy Bach, executive director of United Policyholders, a San Francisco-based group that advises consumers on insurance claims. "What this says is that the industry has been raking in spectacular profits while they're getting more and more audacious in their tactics," she says.

Allstate spokesman Michael Siemienas says the company won't comment on what role McKinsey played in lowering the insurer's loss ratio and boosting its profits. Allstate did change the way it handles homeowners' insurance claims, he says. "In the early

1990s, Allstate redesigned its claims practices to more efficiently and effectively handle claims and better serve our customers," he says.

"Allstate's goal remains the same: to investigate, evaluate and promptly resolve each claim based on its merits," Siemienas says. "Allstate believes its claim processes support this goal and are absolutely sound."

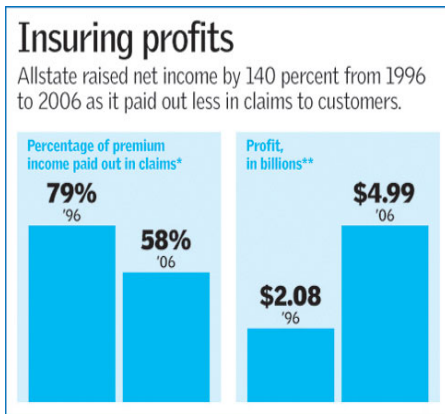
McKinsey doesn't discuss any of its work for clients, spokesman Mark Garrett says.

Jerry Choate, Allstate's chief executive officer from 1995 to '98, said at a news conference in New York in 1997 that the company's new claims-handling process had reduced payments and increased profit, according to a report in a March 1997 edition of National Underwriter magazine. Insurers can't make significantly more money just from cutting sales costs, he told reporters. "The leverage is really on the claims side," Choate said. "If you don't win there, I don't care what you do on the front end. You're not going to win."

The more cash insurers can keep from premiums, the more they can invest. This pool of assets--most of which the companies invest in government and corporate bonds--is known as float.

"Simply put, float is money we hold that is not ours but which we get to invest," billionaire Warren Buffett, CEO of Berkshire Hathaway Inc., wrote in his annual letter to shareholders this year. "When an insurer earns an underwriting profit, float is better than free," he wrote in 2006. Omaha, Nebraska-based Berkshire Hathaway generated 51 percent of its \$11 billion profit in 2006 from insurance.

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*Includes only property-casualty insurance. **For the entire company. Sources: Company, SEC filings

Insurers secret tactics to cheat...

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"The whole purpose of insurance is evaporating before our eyes as we continue to send checks to the companies."

Douglas Heller, Foundation for Taxpayer and Consumer Rights

Claims payouts for the entire property-casualty industry have decreased in the past decade. In 2006, carriers paid out 55 percent of the \$435.8 billion in premiums collected, according to the Insurance Information Institute, a trade group in New York. That compares with a 64 percent payout ratio on \$267.6 billion in premium revenue in 1996. As companies pay less to policyholders, their investment gains are growing, according to the trade group and research firm A.M. Best Co. in Oldwick, New Jersey. The industry has increased profits by an annual average of 46 percent since 1994, Institute data show. In 2006, carriers invested \$1.2 trillion and recorded a net gain of \$52.3 billion, up from \$713.5 billion invested for a gain of \$39.1 billion in 1994.

Insurance companies are no longer following their mandate to take care of policyholders' money and then pay it out when needed, says Douglas Heller, executive director of the nonprofit Foundation for Taxpayer and Consumer Rights in Santa Monica, California. "The whole purpose of insurance is evaporating before our eyes as we continue to send checks to the companies," Heller says. "Insurers are looking to shed their purpose as a risk bearer and become financial institutions."

That kind of criticism is unwarranted, says Robert Hartwig, chief economist at the Insurance Information Institute. He says about 1 percent of policyholders contest what they're

offered. "The insurance industry can be justifiably proud of its performance," Hartwig says. "It's in the insurance industry's best interests to settle claims as fairly and as rapidly as possible."

Companies have sharpened the use of technology in the past 20 years to help tighten claims payouts. Insurers following McKinsey's advice on

tematically underpay policyholders without adequately examining the validity of each individual claim," former Texas insurance commissioner Hunter told the U.S. Senate Committee on Commerce, Science and Transportation on April 11. He also criticized Xactimate. "If you don't accept their offer, which is a low ball, you end up in court," Hunter said. "And that

was the recommendation of McKinsey." Computer Sciences and Xactware declined to comment.

Farmers Group, a subsidiary of Zurich Financial Services AG, agreed in 2005 to stop using Colossus to evaluate claims filed by policyholders who have accidents with uninsured or underinsured drivers. The move was part of a \$40 million settlement in a class-action lawsuit in

Pottawatomie County District Court in Oklahoma in which the plaintiffs claimed the company had repeatedly and wrongly failed to pay enough for crash injuries.

An internal e-mail introduced in the Farmers lawsuit shows the company had pressured its adjusters, whom it calls claims representatives, or CRs, to pay out smaller amounts--and rewarded them when they did.

"As you know, we have been creeping up in settlements," David Harding, a Farmers claims manager, wrote in an

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McKinsey's advice



McKinsey told Allstate it could wear down customers by delaying settlements and stalling court proceedings.



The consulting firm said there are winners and losers. Allstate can win by paying out no more than it has to, so it can keep more of its premium income.



McKinsey suggested Allstate politely make a low offer on a claim. If a policyholder protests or hires a lawyer, the insurer should fight back.

Source: A videotape of a hearing in Fayette Circuit Court in Lexington, Kentucky

claims processing have adopted computer programs with names such as Colossus and Xactimate. Colossus, made by El Segundo, California-based Computer Sciences Corp., calculates the cost of treating people injured in auto accidents, including the degree of pain and suffering they'll endure and any permanent impairment they may have, according to Computer Sciences' Web site. Xactimate, made by Xactware Solutions Inc. of Orem, Utah, is a program that estimates the cost of rebuilding a home.

Insurers sometimes manipulate these programs to pay out as little as possible, lawsuits have asserted. "Programs like Colossus are designed to sys-

THE BILL AND THE MAN BEHIND IT. POA's conversation with a rising star in D.C.

POA



An important Bill was recently introduced in the US House of Representatives called the **HOMEOWNERS DEFENSE ACT OF 2007**. Debate has already begun on this Bill.

The Bill was introduced by two rising stars from Florida – U.S. Representatives Ron Klein and Tim Mahoney and already has earned the support of 35 other members from 20 states.

The Bill is extremely significant to POA members because it will reduce premiums and increase the number of carriers offering homeowners insurance in storm-prone areas of the country.

At first glance, the Bill appears to be a give-away to insurers. It's not. The authors of the Bill have taken great steps, and are prepared to take additional steps, to achieve their goal of available and affordable homeowners insurance.

POA's legislative analyst sat down with the man behind the Bill – Rep. Tim Mahoney – and gained tremendous insight into the Bill and the man behind it.

Rep. Mahoney is a man of stark contrasts in that he's what we will call a "new Democrat"

– a fiscal conservative. He is a rancher and a successful venture capitalist who's earned the reputation of being both an avid job creator and supporter of small enterprise. He represents Florida's House District 16, which includes Palm Beach County. He is a member of the House Financial Services and Agricultural Committees and is also a member of the Blue Dog Coalition – a small conservative group dedicated to restoring fiscal responsibility to Congress.

In September, 2006, voters elected him to replace Mark Foley, the Republican destroyed by scandal. Congressman Mahoney will seek reelection and has earned POA's endorsement. He continues to prove he's worthy of our members' support.



Rep. Mahoney describes the Bill he co-authored as one that creates an institutional investment vehicle whereby large investors (not retail investors) can invest in a new category of bonds called Catastrophic Bonds. He says it, in no way, replaces any emergency funds provided by the federal government in a disaster; it's simply a mechanism to take uncertainty (a great excuse for private carriers to jack up rates) out of the equation.

These bonds only purpose is

to serve as reinsurance for state-sponsored insurance funds. Any state wishing to participate, pools their insurance funds with other participating states; participation is not mandatory. Private insurance companies are reinsured and these bonds help lower the cost of reinsurance for the carriers. There are caveats for insurance companies to qualify including:

- ◆ the reinsurer must be a state-sponsored fund (not a private carrier or a consortium of private carriers like what has occurred with various wind pools),
- ◆ the board of the fund must include governmental officials who are accountable to the public, and
- ◆ participating states must have passed laws that enforce the provisions.

Rep. Mahoney also noted that the Bill also contains an insurance stabilization mechanism by providing low cost federal loans to states.

Acknowledging that homeowners are the first line of defense against a catastrophe, the bill encourages sound mitigation efforts and stresses the initiatives homeowners can take to protect their own homes, for example the installation of hurricane shutters, generators, storm windows, etc...

Rep. Mahoney is also interested in adding to the Bill a concurrent clause that would address the wind versus flood water issue. That debate may be better suited for the Flood Bill (HR 3121).

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US Representative Tim Mahoney won Mark Foley's seat after Foley was forced to resign because of a sex scandal.

The Bill and the Man...

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POA has asked Rep. Mahoney to consider several other issues:

- ◆ Since private carriers benefit from lower reinsurance rates resulting from the catastrophic fund, POA believes the Bill should contain a clause that requires benefiting carriers to an anti-cherry picking mandate. In other words, any carrier benefiting from lower reinsurance rates resulting from the fund must offer all insurance products (home AND auto) and not simply cherry pick by offering auto while bailing out of the homeowners market. POA believes this would most certainly increase the availability of homeowners insurance in areas where they've otherwise bailed.
- ◆ As most POA members know, the government's flood insurance policies are sold by private insurance companies. For example, State Farm and others sell their own policies as well as flood policies issued by the federal flood insurance program. These insurance companies are paid about 1/3 of each premium dollar

collected to sell and service (adjust) the flood policies. When a claim is made, the private insurance companies send out THEIR OWN ADJUSTERS (loyal to that carrier) to adjust the claim, automatically building into the claims equation an incentive to dump onto the flood program (taxpayers) all liabilities of a claim, even those that are contractually the liability of the private carrier. It is estimated that more than \$9 billion worth of claims were fraudulently paid by the taxpayer after Katrina.

Given this, POA believes it's time for the National Flood Program to conduct a "cost/benefit analysis" that would determine if now is the time to in-source (internalize) the adjusting function for flood claims. This would not only eliminate the need to pay private carriers 33% of the flood premiums collected, but it would also eliminate dumping the carriers' liabilities onto the flood program.

- ◆ POA would like for Rep. Mahoney to increase the discount insurers currently allow for fortification of a property. This would include discounts for hurricane shutters, generators, and other things that help mitigate damage done to a property by storms. Currently, many insurers cap the discount percentage at around 15% off of premiums regardless of the fortifications made to a

property. POA is shooting for a 25-30% premium discount cap.

- ◆ POA believes Rep. Mahoney should also investigate what sort of tax incentive can be provided to residents in states that do not have state income taxes including Florida, Texas, Nevada, etc... It may be possible to allow property owners discounts on property taxes in those states however, at this time, the legality of that is unclear.

"The bill recognizes that the single biggest investment for most Americans is their home. I have been proud to work with Congressman Klein to develop legislation that protects homeowners by making sure they have access to affordable insurance. This legislation would encourage responsible development and risk mitigation while ensuring that the American taxpayer will never have to fund a bailout in the event of a natural catastrophe," said Congressman Tim Mahoney.

POA is excited to work closely with Congressman Mahoney and his staff on this and other legislation that benefits the policyholder. We believe he shares our goals of available and affordable homeowners insurance and is willing to do what it takes to achieve those goals.

Interested in learning more about this rising star and/or help ensure he stays in Congress and fight for you? Visit: www.timmahoneyforflorida.com

The Bush Administration strongly opposes this bill or anything that remotely resembles it.

Committee Probes FEMA's Response to Reports of Toxic Trailers



Henry A. Waxman, D-CA, Chairman,
House Committee on Government and
House Reform

FEMA's lawyers blocked testing of occupied trailers because once tested, FEMA would have a duty to respond.

Today we begin two days of hearings on the Federal Emergency Management Agency. These hearings are part of a series of hearings in this Committee on how to make government effective again.

In the 1990s, FEMA was a model government agency. But as Hurricane Katrina showed, cronyism, underfunding, and lack of leadership turned FEMA into the most ridiculed agency in the government.

In these hearings, we will ask whether FEMA has learned the lessons of Hurricane Katrina and restored its capacity to protect the public in disasters.

Today we are going to look at a narrow, but telling subject: FEMA trailers that exposed our citizens to dangerous levels of formaldehyde. Then in two weeks, we will look at the broader topic of FEMA's preparedness for the next disaster. I commend my colleague, Ranking Member Davis, for asking for the preparedness hearing and for his bipartisan approach to these issues.

Americans were repulsed by the indifference FEMA dis-

played after Hurricane Katrina. Incredibly, FEMA has adopted the same attitude in addressing reports of high levels of formaldehyde in FEMA trailers.

The nearly 5,000 pages of documents we've reviewed expose an official policy of premeditated ignorance. Senior FEMA officials in Washington didn't want to know what they already knew because they didn't want the moral and legal responsibility to do what they knew had to be done. So they did their best not to know. It's sickening and the exact opposite of what government should be.

My staff has prepared a briefing memo for members that describes in detail what we learned from our review of the FEMA documents. I ask unanimous consent to include the memo and the documents it cites in the hearing record.

The FEMA documents depict a battle between FEMA field staff, who recognized right away that formaldehyde was a serious problem, and FEMA headquarters, particularly FEMA's lawyers, who wanted to pretend it didn't exist.

In March 2006, news articles reported high levels of formaldehyde in FEMA trailers. FEMA field staff urged immediate action, saying: "This needs to be fixed today," "we need to take a proactive approach," and there is an "immediate need" for a plan of action.

But when the issue reached FEMA's lawyers, they blocked testing of occupied trailers. One FEMA attorney explained: "Do not initiate any testing until we give the OK. ...Once you get results...the

clock is running on our duty to respond to them."

Another FEMA official wrote: the Office of General Counsel has advised that "we do not do testing" because it "would imply FEMA's ownership of this issue."

Early in the process, due to the perseverance of a pregnant mother with a four-month-old child, FEMA did test one occupied trailer. The results showed that their trailer had formaldehyde levels 75 times higher than the maximum workplace exposure level recommended by the National Institute for Occupational Safety and Health.

The mother evacuated the trailer. FEMA stopped testing occupied trailers. And top officials issued a statement that said: "FEMA and industry experts have evaluated the small number of cases where odors of formaldehyde have been reported, and we are confident that there is no ongoing risk."

In early July 2006, FEMA officials worked with EPA and CDC to develop a testing protocol for unoccupied trailers that would "determine formaldehyde concentrations emanating from the trailer...under living conditions." EPA officials advised FEMA that "the levels we find after testing may well be more than 100 times higher than the health base level."

After receiving this report, FEMA responded by changing the testing protocols. Instead of simulating actual living conditions — which would show high levels of formaldehyde — FEMA directed that the trailers be tested with their windows open, their ventilation fans

FEMA'S TOXIC TRAILERS

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running, and their air conditioning units operating 24 hours per day.

A leading treatise on diagnosing indoor air quality calls testing for formaldehyde under these conditions "meaningless."

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FEMA repeatedly received

complaints from occupants about high formaldehyde levels, including at least two complaints involving the death of occupants. But the agency brushed the complaints aside. Over 100,000 families have lived in FEMA trailers and manufactured homes. Yet the leadership of FEMA refused to take even the most basic steps to protect them from toxic formaldehyde fumes.

"It is impossible to read the FEMA documents and not be infuriated."

Yesterday, FEMA finally admitted it made a mistake. It announced it would begin a program to test occupied trailers for dangerous levels of formaldehyde. This is exactly what FEMA's field staff urged over a year ago. But it took this hearing — and the prospect that Director Paulison would face tough questions— to spur FEMA to act.

FEMA exists to serve the public. But it acts as though protecting Director Paulison from embarrassment is more important than protecting the

health of the victims of Hurricane Katrina.

It is impossible to read the FEMA documents and not be infuriated. Americans don't mind paying their taxes if they get a government that works. But when that bargain is broken — and tax dollars are squandered and health jeopardized — frustration rises and trust in government erodes.

At our last hearing with Surgeon General Carmona, I said that good oversight

FEMA's Management and Oversight of Payments for Insurance Company Services Should Be Improved (report highlights)

GAO

Extraordinary recent flood events raise serious questions about the solvency of the National Flood Insurance Program (NFIP), which is administered by the Federal Emergency Management Agency (FEMA). The NFIP is largely implemented by private insurance companies that sell and service policies and adjust claims under the Write Your Own (WYO) Program. This report, prepared under the authority of the Comptroller General, examines (1) how much FEMA paid the WYO companies in recent years for operating costs and how FEMA determined payment amounts; (2) how FEMA's approach to determining operating costs assures that payments are reasonable estimates of companies' expenses; and (3) how FEMA assures that financial and management controls are in place for the WYO program and operate as intended. To do these assessments, GAO interviewed FEMA and insurance officials, and analyzed statutes, regulations, payment data, methodologies, and audits of WYO companies.

What GAO Recommends

GAO recommends that FEMA take steps to ensure that it has a reasonable estimate of actual expenses WYO companies incur to help determine payments for services and that

financial audits are performed. The Department of Homeland Security reviewed a draft of this report and generally agreed with our recommendations.

FEMA's payments to WYO insurance companies for operating costs ranged from more than a third to almost two-thirds of the total premiums paid by policyholders to the NFIP for fiscal years 2004 through 2006. In fiscal years 2005 and 2006, larger payments to WYO insurance companies were the result of settling an unprecedented number and dollar amount of claims for damages resulting from major hurricanes and flood events including Hurricane Katrina. To determine the amount of these payments, FEMA negotiated payment approaches with insurance industry representatives when it established the current WYO program in 1983 based on industry averages for operating expenses for other lines of insurance (such as homeowners, commercial, and fire), past practice, and discussion.

The approach FEMA uses to determine operating costs for WYO insurance companies, rooted in policies negotiated and established about 25 years ago, cannot ensure that payments are based on

reasonable estimates of actual expenses because actual expenses incurred by the companies for their services to the NFIP are not considered. Although it has authority to do so, FEMA does not collect data on actual WYO flood insurance expenses that could provide a basis for insuring that the WYO payments are based on a reasonable estimate of actual expenses. FEMA officials said that they have not asked WYO insurance companies to provide expense information due to concerns that the approach would increase FEMA's administrative costs and cause a decline in WYO program participation. However, some data on expenses WYO insurance companies allocate to flood insurance are available. FEMA officials said that they cannot use this information due to reporting inconsistencies. Also, there is some precedent in two similar public-private insurance partnerships for collecting actual expense information. FEMA's decision to rely on long-standing practices does not meet federal internal control standards that agencies be held accountable for, among other things, stewardship of government resources.

Biennial financial statement audits—FEMA's primary mechanism to provide assurance that it receives complete and accurate financial management information from the WYO insurance companies—were not performed

consistently as required by regulation. FEMA regulations require each participating company to arrange and pay for these audits by independent certified public accounting firms. However, many WYO insurance companies did not comply with the schedule in recent years. For example, for fiscal years 2005 and 2006, 5 of 94 participating companies had biennial financial statement audits performed. FEMA officials said they allowed some companies to delay having the audits done because they were in the process of contracting with new subcontractors to perform their financial reporting responsibilities. Nonetheless, without the required biennial audits, FEMA lacks an appropriate internal control mechanism for effective program oversight.

CLICK HERE FOR FULL REPORT



The suit accuses insurance companies of pressuring engineers to falsify reports so storm damage could be blamed on flood water instead of wind, which would shift the financial burden to the National Flood Insurance Program.

Judge Unseals Katrina Damage Lawsuit

The U.S. Department of Justice is weighing whether to intervene in a lawsuit that accuses insurance companies of overbilling the federal government for flood damage from Hurricane Katrina, a judge who unsealed the case on Monday said.

A team of lawyers filed the so-called "whistleblower" suit in April 2006 on behalf of two sisters who worked for a company that helped State Farm Insurance Co. adjust policyholder claims on the Mississippi Gulf Coast after the August 2005 storm.

But the suit was legally required to remain under seal so the Justice Department could investigate and consider intervening in the case.

U.S. Magistrate Judge Robert Walker in Gulfport, Miss., ordered the case unsealed Monday, even though the federal government had argued that its disclosure would "compromise (its) ability to conduct an adequate civil investigation of this case."

"The government gives no explanation for how the investigation would be compromised by unsealing the case," Walker wrote in a one-page order.

Justice Department spokesman Charles Miller said he would not comment on the suit or the judge's ruling.

A legal team led by high-profile litigator Richard "Dickie" Scruggs filed the lawsuit on behalf of Cori and Kerri Rigsby, sisters from Ocean Springs, Miss., who worked for a company that contracted with State Farm.

State Farm, Nationwide Insurance Co., Allstate Insurance Co., USAA Insurance Co., and

several engineering firms that contracted with the companies are named as defendants in the suit.

The suit, which represents only one side of a legal argument, accuses insurance companies of pressuring engineers to falsify reports so storm damage could be blamed on flood water instead of wind, which would shift the financial burden to the National Flood Insurance Program.

The companies say their homeowner policies cover damage from wind but not rising water, including storm surge. Insurers sell separate flood insurance policies that are subsidized by the federal government.

"By employing engineering reports that reallocated losses to 'flood' instead of homeowners, State Farm, Nationwide, and other insurers essentially pushed off their responsibility to pay claims onto the federal government," the 35-page lawsuit alleges.

Zach Scruggs, Richard Scruggs' son and law partner, said that Justice Department intervention could make it a stronger case.

"I think it's going to be a strong case, either way," Zach Scruggs said. "It's their right to (intervene), but we are more than prepared and willing to litigate this on our own, on behalf of the government."

State Farm spokesman Phil Supple said: "Given that the Rigsbys have been self-proclaimed whistleblowers for more than a year, it was not surprising to see the existence of this lawsuit, which gives them a potential monetary incentive for filing it."

By MICHAEL KUNZELMAN, AP

E.A. Renfroe & Co., a Birmingham, Ala.-based insurance adjusting firm, assigned the Rigsbys to help State Farm adjust Katrina claims. The sisters quit the firm after they provided Scruggs - and state and federal authorities - with reams of internal State Farm claims records.

The sisters claim the documents show that State Farm manipulated engineering reports so claims could be denied, a charge that the Bloomington, Ill.-based insurer denies.

Renfroe sued the Rigsbys for distributing the documents. Last month, a federal judge presiding over that case in Alabama appointed two veteran attorneys to prosecute Richard Scruggs and his law firm for criminal contempt.

U.S. District Judge William Acker ruled in June that Scruggs "willfully violated" a court order requiring him to return all of the documents that the Rigsby secretly copied.

Meanwhile, the Rigsbys' suit isn't the first of its kind since Katrina hit on Aug. 29, 2005. In Louisiana, U.S. Attorney David Dugas decided against intervening in a whistleblowers' lawsuit that also accuses insurers of overbilling the NFIP for Katrina's flood damage.

An attorney for a group of former insurance adjusters filed that suit last year in federal court. A federal judge in New Orleans unsealed it in May.

[CLICK HERE FOR RULING BY THE 5th CIRCUIT](#)

5th Cir. Says 'Flood' Exclusions Bar Coverage for New Orleans Canal

NEW ORLEANS — The 5th Circuit Court of Appeals on Aug. 2 reversed a lower court and ruled that "flood" exclusions in standard homeowners policies issued by several Louisiana insurers unambiguously bar coverage for damage that occurred when New Orleans canals were breached during Hurricane Katrina. *In re: Katrina Canal Breaches*, No. 07-30119 [*Humphreys v. Encompass Insurance Co.*, No. 06-0169; *Vanderbrook v. State Farm Fire & Cas. Co.*, No. 05-6323; *Xavier University of La. v. Travelers Property Cas. Co.*, No. 06-516; and *Chehardy v. State Farm*, Nos. 06-1672, 06-1673 and 06-1674] (5th Cir.).

The ruling by the three-judge panel reversed a Nov. 27 order by Judge Stanwood R. Duval Jr. of the U.S. District Court for the Eastern District of Louisiana that homeowners could reasonably interpret the term "flood" to preclude coverage for naturally occurring events, but not for the damage

resulting from the negligent or intentional acts alleged to have caused the city's levees to fail during Hurricane Katrina (See *HarrisMartin's Columns: Mold*, Dec. 2006).

The Circuit Court concluded, "even if the plaintiffs can prove that the levees were negligent designed, constructed, or maintained and that the breaches were due to this negligence, the flood exclusions in the plaintiffs' policies unambiguously preclude their recovery."

"Regardless of what caused the failure of the flood-control structures that were put in place to prevent such a catastrophe," the court said, "their failure resulted in a widespread flood that damaged the plaintiffs' property. This event was excluded from coverage under the plaintiffs' insurance policies, and under Louisiana law, we are bound to enforce the unambiguous terms of their insurance contracts as written."

Insurer defendants in the consolidated cases included dozens of companies, nearly all of whom issued policies containing a standard exclusion precluding coverage for "flood, surface water, waves, tidal water...."

The Circuit Court said that any differences in policy language were immaterial to the appeal.

Counsel for plaintiffs included Joseph M. Bruno of Bruno & Bruno in New Orleans (liaison counsel); Daniel E. Becnel Jr. of Reserve, La.; Calvin Fayard of Fayard & Honeycutt in Denham Springs, La.; Hugh P. Lambert of Lambert & Nelson in New Orleans; and Gerald Meunier of Gainsburgh, Benjamin, David, Meunier & Warshauer in New Orleans.

Counsel for insurers include Ralph S. Hubbard III of Lugenbuhl, Wheaton, Peck, Rankin & Hubbard in New Orleans and Judy Y. Barrasso of Barrasso Usdin Kupperman Freeman & Sarver in New Orleans.

NEW CAUSE OF ACTION MAY PUT AN END TO LOWBALL TECHNIQUES USED BY INSURERS

POA

Some good news for attorneys and policyholders.

Thanks to the good work of one of our professional members, Alex Watkins of Capitelli & Wicker (New Orleans), lawyers across the country can bring a new cause of action against an insurer and their not-so-arms-length price fixing partner, Xactimate. The new cause of action is a Horizontal Price Fixing (antitrust) violation.

In a recent case, Judge Duval ruled that the plaintiffs had stated sufficient facts to pursue fraud and breach of contract claims against State

Farm and Xactimate. More importantly, the Judge held that insured had antitrust standing to bring the antitrust claim, and only lacked sufficient facts to plausibly suggest a conspiracy.

Louisiana, like most other states, has a boilerplate antitrust statute mirroring the Sherman Act, on its books. Any policyholder in a state having such a statute can bring this type of action. Mr. Watkins reported to POA that his firm has filed two other similar cases against Lafayette and Travelers Insurance. We will report on those as soon as possible.

Mr. Watkins told POA. "This ruling means that insureds can potentially bring such actions against carriers."

Perhaps such cases will bring an end to the phony price fixing scheme (a.k.a. Xactimate) that has allowed insurers to lowball repairs.

[CLICK HERE FOR THE RULING](#)

As Premiums Rise, Homeowners Drop Wind Coverage

By LIAM PLEVEN Wall Street Journal

A small but growing number of homeowners are taking an extreme approach to insurance against hurricane winds: They're going "bare" -- doing without the coverage entirely.

Florida this year passed a law making it easier to opt out of wind coverage amid a voter backlash over soaring premiums, and the practice is also appearing in other states, particularly those along the Gulf Coast hit hard by recent storms.



Reuters

A tree rests on a house in Beaumont, Texas, after Hurricane Rita hit in 2005.

While the option of doing without wind coverage is generally limited to people who don't have mortgages -- banks typically require borrowers to carry insurance -- even a slender increase in those going uncovered could have broader repercussions in the wake of another major storm. A drop in insurance payouts could leave storm-struck areas with fewer resources for rebuilding and shift some of the burden to taxpayers. That more individuals are opting to go without coverage also underscores the breakdown of the insurance system in coastal areas.

Nobody tracks how many Americans are going without wind coverage, and it's likely still rare -- most homeowners do have mortgages and 96% carry some

kind of home insurance, which often includes wind coverage, according to the trade group Insurance Information Institute. Moreover, in some coastal states, wind coverage is typically included as part of a general policy, making it harder to drop. Nevertheless, people in the insurance industry say it occurs, and some say they see an increase.

"There's no doubt in my mind that there are more people going bare than in the past," says Robert Rusbuldt, chief executive of the Independent Insurance Agents & Brokers of America, an Alexandria, Va.-based organization that represents 300,000 agents and brokers nationwide. "They're betting against Mother Nature."

Mr. Rusbuldt says a survey conducted for the group in May concluded that nearly three million Americans were dropped by their home insurers in the past two years -- more than two-thirds of them in 16 Southeastern states. The survey had an average margin of error of 3.7%. "You have to assume" that some of those people did not get new wind coverage, he says.

After the devastating hurricanes in 2004 and 2005 caused more than \$150 billion in damages, much of which they had to pay for, insurers have increased rates dramatically while dropping clients they consider high-risk. Allstate Corp. -- which insures nearly one out of every eight homes in the U.S., according to A.M. Best Co. -- has moved to shed roughly 290,000 customers in hurricane-prone states since Katrina, most of them in Florida.

Customers can choose to drop wind coverage on their own. "We work with them to make sure they are appropriately covered," says Mike Siemienas, an Allstate spokesman. But, he adds, "At the

end of the day, it's the customer's decision."

The federal government handed out at least \$6.5 billion in grants and aid money after Hurricane Katrina hit in 2005 -- some of which went to help people who didn't have government-backed flood insurance. But one of Katrina's consequences was a sharp jump in premiums for wind coverage from private insurers, which doubled or tripled in some coastal areas. Some homeowners are doing the math and concluding it can be more cost-effective to cover rebuilding costs out-of-pocket, rather than paying big annual premiums.



A house in Lake Charles, La., with roof damage after Hurricane Rita.

Kathy Sansbury dropped coverage on her Fort Lauderdale, Fla., townhouse after the premium roughly doubled in December, to nearly \$9,000. At that price, she and her husband concluded that after paying the higher premium for just 13 years, they would have spent enough to rebuild.

"It doesn't make sense, as expensive as it is," she says.

At the other end of the spectrum are individuals who either can't afford soaring premiums, or who have concluded that their homes aren't worth enough to warrant the price of coverage at all.

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Many consumers who do not have mortgages are going without homeowners coverage because of soaring premiums and fears the insurer won't pay when a claim, covered by the policy, is made.

There's also interest in self-insurance pools. Homeowners are "looking for ways to bypass insurance companies," says state Sen. Don Gaetz, a Republican who represents part of the Florida Panhandle.

Large corporations have long turned to self-insurance, setting up their own insurance companies and paying premiums to them, or planning to pay out-of-pocket if disaster strikes.

As Premiums Rise.....

"There's no incentive to have my home insured," says Melissa DeStio, who owns a roughly 30-year-old mobile home in Boynton Beach, Fla., that she estimates is worth up to \$6,000. "The premium far exceeds the benefit, after you pay the deductible."

Some insurance agents say they are seeing an increase in the number of clients who have taken the plunge of going uncovered or discussed the option. Alex Soto, who heads InSource Inc., a Miami insurance agency, estimates that 2% to 3% of his clients have dropped wind coverage. Five years ago, he says, such a step was almost unheard of.

Earlier this year, a number of homeowners in the New Orleans area opted to go without wind coverage after being dropped by their prior carriers and electing not to turn to Louisiana's insurer of last resort, says Marc Eagan, president of Eagan Insurance Agency. He estimates that 500 of his agency's 9,000 homeowners' insurance customers are currently without the coverage. But Mr. Eagan adds that the market's improving because no storms have struck the area so far this season, and he expects more insurers will be willing to offer coverage at rates that appeal to customers.

The recent upheaval in the insurance industry has led to a dramatic rise in the number of peo-

ple getting insurance through state-created insurers of last resort. These insurers sell insurance to people who can't get coverage otherwise, often at much higher rates than they got in the private sector. For instance, Florida's insurer of last resort, Citizens Property Insurance Corp., now insures more than 1.3 million homes, more than any other company in the state.

Until recently, insurers in Florida were required to include wind coverage in all policies they sold, except in particularly high-risk areas. But in response to anger over rising premiums, lawmakers passed new rules -- which took effect July 1 -- letting insurers sell policies without wind coverage to any Florida homeowner willing to sign a statement that they don't want it.

There's also interest in self-insurance pools. Homeowners are "looking for ways to bypass insurance companies," says state Sen. Don Gaetz, a Republican who represents part of the Florida Panhandle.

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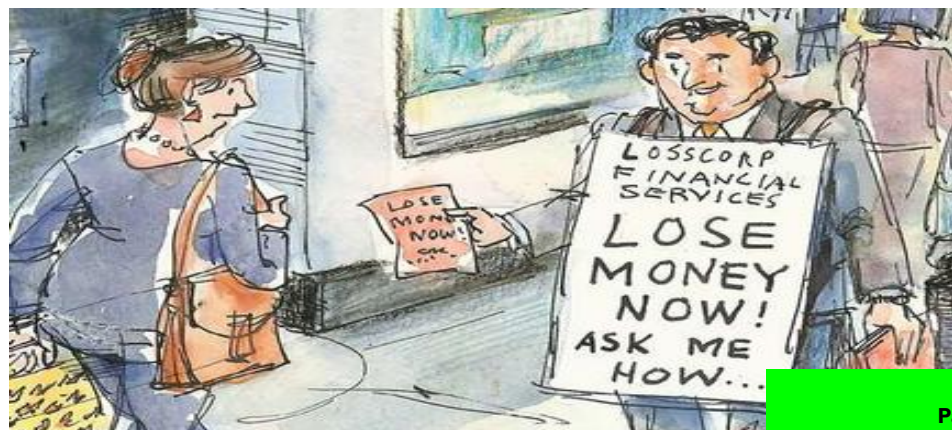
Companies including Walt Disney Co. and Wal-Mart Stores Inc. have said they now carry less

insurance against hurricane damage after storms the past few years. In a recent filing with the Securities and Exchange Commission, Disney blamed "recent weather events" for its inability to purchase as much wind insurance as it previously carried. As a result, the company says it is "carrying more self-insurance ... than we have in the past." Disney's main property in a hurricane-prone state is the Walt Disney World theme park in Florida. But for some homeowners, dropping insurance simply means taking on a big risk. Wendy Avin, who lives in a mobile home park in Gulfport, Miss., a town that was ravaged by Hurricane Katrina, says she received an insurance payout for damages to her home from that storm. But now, she says, she cannot afford the wind coverage and is going without. "It really worries me," she says.

George Mastics, who lives near the Atlantic Ocean in Palm Beach, Fla., says the structural stability of his house, built in 1935, factors into his decision not to carry wind insurance. "The walls are so thick," he says. "I can't imagine a hurricane tearing it down."

"Maybe I'm a gambler. I don't know," he adds. But he hasn't paid for wind coverage for a few years. "So far, I'm ahead of the game."

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MISSISSIPPI INSURANCE COMMISSIONER'S RACE HAS FAR-REACHING IMPLICATIONS

POA

"Illness and fatigue" plagued incumbent Insurance Commissioner, George Dale, who was unseated in the Democratic Primary on August 7. Voters were just plain "sick and tired" of Dale's pro-insurance industry positions and wanted a more consumer-friendly Commish.

Dale had held the position for 32 years but Hurricane Katrina proved too tough a test for the man who basically gave insurers permission to price gouge, deny,

delay and lowball legitimate claims in Mississippi.

The State's Democratic Party didn't even want Dale to run as a Democrat. They felt the Republican ticket suited him better.

Gary Anderson, a Jackson, MS resident, won the Democratic Primary and will face Republican candidate and State Senator, Mike Chaney, in the November General election.

Anderson's platform in-

cludes implementing several programs that will reduce skyrocketing premiums and give Mississippians a greater field of carriers from which to choose. He also will enforce "best practices" for claims handling. Anderson's ethics reports filed with the state show he has honored his promise to refuse campaign contributions from insurance companies and/or their executives.

Chaney on the other hand promised to refuse contribu-

tions from insurance companies and their "suits" but his ethics report filings tell a different story. Moreover, his Senate voting record gives us a glimpse of what's to come if he's elected Insurance Commissioner and it's not pretty.

Mississippi may be a preamble to future races in states impacted by severe weather. As such, POA feels the need to weigh in on this important race.

Mr. Anderson gets POA's endorsement.

Louisiana Appeals Court Decision at Odds with 5th Circuit on Coverage

The debate will rage on and on and on...

POA

A Louisiana state appeals court has taken a somewhat different view from the views expressed by the U.S. 5th Circuit court in a similar case and with the same state law being interpreted. The state appeals court ruled that people who lost their homes in hurricanes are not necessarily entitled to recover the full amount of their losses if their insurance policies covered only some perils but not others. This is a partial victory for insurers.

The Louisiana appeals panel said a lower court erred in ruling that, under the state's Valued Policy Law, homeowners could recover in full for the total destruction of their homes, even if covered perils such as wind and rain were not solely re-

sponsible for the loss.

It sent the case back to the trial court and said the insurer, Louisiana Citizens Property Insurance Co, bears the "clear burden" to show that uncovered perils, such as flood waters, were the "efficient and proximate cause" of the loss.

The case involved Mark and Barbara Landry, who lost their home in Hurricane Rita in September 2005. Their \$57,200 homeowners' policy covered losses from wind and rain but not floods.

"I feel like the decision is very favorable to plaintiffs," said Tom Filo, a lawyer representing the Landrys. "It's certainly foreseeable that in every hurricane, there will be a

storm surge, which is caused by wind, which is always a covered peril."

Filo expects an appeal to the Louisiana Supreme Court.

Louisiana Citizens had argued the typical "switch" argument - holding the industry liable for total losses would burden residents by making it unattractive for carriers to operate in the state.

The August 6 federal appeals court ruling, in a case involving homes destroyed in Katrina and Rita (reported on the cover of this newsletter), said insurers need pay a policy's full value only when homes are rendered total losses from covered perils.

The debate will continue.



Insurers secret tactics to cheat ...

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e-mail to employees on Nov. 20, 2001. "Our CRs must resist the temptation of paying more just to move this type file. Teach them to say, 'Sorry, no more,' with a toothy grin and mean it." Harding praised a worker for making low settlements. "It can be done as Darren consistently does," he wrote. "If he keeps this up during 2002, we will pay him accordingly."

Farmers said in court papers that it didn't seek to pay less than customers were due. "The e-mail speaks for itself," Farmers wrote. "Plaintiff's characterization of it is denied."

Edward Rust Jr., CEO of State Farm, testified in a 2006 civil case that his company revamped its claims handling through a project called ACE, or Advanced Claims Excellence. McKinsey suggested the use of ACE, according to evidence presented in the district court of Grady County, Oklahoma.

"Technology has allowed us to really streamline our claim organization to be more efficient and responsive," Rust testified. He said the company wanted to cut expenses for claims. In the Oklahoma case, Bridget and Donald Watkins, whose Grady County house was destroyed during a tornado in 1999, accused State Farm of misrepresenting the damage from the storm and won a \$12.9 million judgment in May 2006. Watkins and State Farm agreed to an undisclosed settlement after the judgment.

Hunter, who also headed the federal flood insurance program under Presidents Gerald

Ford and Jimmy Carter, told Congress that Allstate, with McKinsey's guidance, gave the name Claim Core Process Redesign to its strategy to change payout practices.

As pervasive as computers have become in insurance, the key actor in settling claims is still the adjuster, the person who talks to policyholders and decides how much they should be paid. Allstate has asked adjusters to deceive customers, says Jo Ann Katzman, who worked as a claims adjuster for Allstate in 2002 and '03. She says managers regularly came to her office in Farmington Hills, Michigan, to give pep talks on keeping claim payments down. They awarded prizes such as port-

were covered. In another case, Katzman says Allstate wouldn't replace a fire-damaged refrigerator--an appliance she says was covered. Katzman now runs Accurate Estimating Services, an independent adjusting company in Bloomfield Hills, Michigan. Allstate's Siemienas declined to comment on Katzman's statements.

Insurers sometimes order employees to offer replacement cost settlements that have no connection to actual prices of home contents, according to testimony in a civil trial. A jury in November 2005 awarded Larry Stone and Linda Della Pelle \$5.2 million in punitive damages and \$616,000 to construct a new

house after finding that Fidelity National Insurance Co. of Jacksonville, Florida, had underpaid the couple by \$183,000 when it offered them \$433,000 to rebuild their two-story Claremont, California, residence.

During the trial in Los Angeles Superior Court, Ricardo Echeverria, the couple's attorney, questioned Kenneth Drake, president of Canyon

Country, California-based RJG Construction Inc., who had been hired by Fidelity's lawyers to evaluate damage estimates.

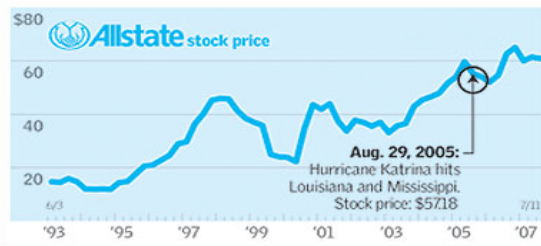
"Are you telling us that sometimes, because the insurance carriers dictate what amounts they are willing to allow for unit costs, estimators then have to comply with that?" asked Echeverria, according to the court transcript.

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If claims payouts were kept down by lowballing or denying legitimate claims, adjusters would be given "goodies".

In 'good hands' with McKinsey

Since McKinsey began consulting with Allstate in the early 1990s, the value of the insurer's stock has risen more than fourfold.



Source: Bloomberg

able refrigerators to adjusters who tried to deny claims by blaming fires on arson without justification, she says. "We were told to lie by our supervisors," says Katzman, 49, who quit by taking a company buy-out in 2003. "It's tough to look at people and know you're lying."

Katzman says an adjuster at Allstate, on orders from a supervisor, told an 89-year-old Detroit fire victim that Allstate wouldn't replace cabinets in her home even though the insurance policy said they

Insurers secret tactics to cheat....

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The long fight

Michele and Tim Ray fought with State Farm for almost a year before getting reimbursed enough to rebuild their Tennessee home.

APRIL 7, 2006 A tornado strikes the Rays' home near Hendersonville. The basement and the foundation are damaged.

MAY 15 The third of three adjusters comes to the house. He has State Farm send a check for \$36,000, which the Rays reject.

MAY 20 An engineer from Warren Engineering, hired by State Farm, examines the house. Concluding the storm didn't cause the damage, State Farm offers \$68,000.

JULY 17 A report by the city of Hendersonville's building inspector says that damage to the Rays' basement was likely caused by the tornado.

AUG. 4 A report by Lamb Engineering (hired by the Rays) says the storm caused damage to the basement and foundation. Contractors later estimated it would cost \$254,000 to rebuild the house.

FEB. 28, 2007 Anthony Locke, a second engineer hired by the Rays, also blames the storm for damage to the basement.

MARCH The Rays are still in the house, living under blue tarpaulins that cover the roof. State Farm offers \$97,000 toward the cost to rebuild.

APRIL 2 State Farm says it's sending someone out to look at the house again and review engineering reports. The next day, State Farm tells the Rays it would settle the claim for \$302,000.

Source: Michele and Tim Ray



"That's absolutely true," Drake said.

"Do you think that's fair?" Echeverria asked.

"Fair or not, it's the name of our business," Drake said.

Drake declined to comment on his testimony. Fidelity is appealing the award.

A New Hampshire case involving a home destroyed in a fire exposed another insurance company tactic: changing a policy retroactively. In April 2003, the Rockingham county attorney in Kingston, New Hampshire, found that a unit of Hartford Financial Services Group Inc. had deleted the replacement cost portion of the homeowner's policy of Terry Bennett after his five-bedroom house burned to the ground in 1993. Bennett, a physician, sued Twin City Fire Insurance Co., claiming his home and its contents--including antiques and fine art--were worth \$20 million, not the \$1.7 million the insurer paid him. After an 11-year battle, he settled with Hartford in 2004 for an undisclosed amount. "Fighting an insurance company is like staring down the wrong end of a cannon," Bennett says.

An unprecedented number of people stared down that cannon after Hurricane Katrina. The August 2005 storm killed more than 16,000 people in Louisiana and Mississippi, left 500,000 people homeless and cost insurers \$41.1 billion. More than 1,000 homeowners sued their insurers in the wake of the storm--the largest- ever number of insurance lawsuits stemming from a U.S. natural disaster.

For insurers, the multibillion-dollar question regarding Katrina was how much of the destruction was caused by

wind and how much by water. Property insurance policies don't cover damage caused by flooding; homeowners have to purchase separate insurance administered by the U.S. government. The wind/water issue has spurred allegations that insurers manipulated the findings of adjusters and engineers.

Ken Overstreet, an engineer based in Diamondhead, Mississippi, who examined destroyed Gulf Coast residences, says someone altered his findings on the cause of the damage to at least four homes. "We were working for insurance companies, and they wanted certain results," says Overstreet, who has been a licensed civil engineer since 1981. "They wanted to get a desired outcome, and that's what they did."

Overstreet, who was working for Houston-based Rimkus Consulting Group Inc., prepared a report on the Gulfport, Mississippi, home of Hubert and Joyce Smith for Meritplan Insurance Co. The engineer found that both wind and water had damaged the house. "The winds out of the east would have racked the entire structure to the west and simply lifted the footings up," he wrote.

Meritplan declined to pay anything to the Smiths, telling them that all of the damage was caused by water. The company sent the Smiths what it said was Overstreet's engineering report. "Due to the extent of the structural damage to the residence, the storm surge accounted for the damage," the report they got said. The Smiths called Overstreet and asked him to look at what Meritplan had sent them. Overstreet says he looked at both reports side by side and then told the couple

that someone had changed his conclusion after his inspection.

"If they defrauded me, how many more did they defraud?" asks Hubert Smith, 88, a retired chiropractor. "There's a lot of crap going on."

Six lawsuits against Rimkus allege the company altered engineering reports. "Those allegations are absolutely false," says Arch Currid, a Rimkus spokesman. "There's no fact to those claims. We're going to vigorously defend ourselves in court, and we're confident we will prevail."

Ed Essa, a spokesman for Calabasas, California-based Countrywide Financial Corp., the parent of Meritplan, says the company confidentially settled a lawsuit with the Smiths in March.

Another engineer involved in Katrina, Bob Kochan, CEO of Forensic Analysis & Engineering Corp., says State Farm asked him to redo his reports because the insurer disagreed with the engineers' conclusions. Kochan sent an Oct. 17, 2005, e-mail to his staff saying State Farm executive Alexis "Lecky" King asked for the changes. "Lecky told me that she is experiencing this same concern with other engineering companies," Kochan wrote. "In her words, 'They are all too emotionally involved and working too hard to find justifications to call it wind damage.'"

Kochan says he complied so State Farm didn't cut its contract with his company. "They didn't like our conclusions," he says. "We agreed to re-evaluate each of our assignments."

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Insurers secret tactics to cheat...

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U.S. Senator Trent Lott has introduced legislation to have insurers regulated by the federal government.. That would supplant a patchwork system of regulation by states. Insurance has no body analogous to the SEC, which can refer cases to the Justice Department for criminal prosecution. That doesn't happen with insurers. The most that state insurance departments typically do is impose civil fines when companies mistreat customers.

Randy Down, an engineer at Raleigh, North Carolina-based Forensic, wrote this Oct. 18, 2005, e-mail response to Kochan: "I have a serious concern about the ethics of this whole matter. I really question the ethics of someone who wants to fire us simply because our conclusions don't match theirs." The e-mails were made public in a civil case against State Farm in Jackson, Mississippi.

State Farm spokesman Phil Supple says Kochan's e-mail comments are out of context. He says sometimes information in engineering reports doesn't support the conclusions.

One State Farm policyholder in Mississippi was Senator Lott, who lost his home in Katrina. He sued State Farm for fraud in U.S. District Court in Jackson, after the insurer ruled that his home had been damaged by water and refused to pay him anything. "It's long overdue for this industry to be held accountable," Lott, 65, says. Lott and State Farm agreed to a confidential settlement in April.

Lott has introduced legislation to have insurers regulated by the federal government. That would supplant a patchwork system of regulation by states. Insurance has no body analogous to the SEC, which can refer cases to the Justice Department for criminal prosecution. That doesn't happen with insurers. The most that state insurance departments typically do is impose civil fines when companies mistreat customers. Such sanctions are weak and infrequent, says Hunter, the former Texas insurance commissioner. Before Katrina, no state or federal prosecutor had ever investigated a nationally known property-casualty company for criminal mistreatment of poli-

cyholders. Mississippi Attorney General Jim Hood says a federal grand jury is probing insurance company claims handling after the hurricane.

There was no criminal investigation after State Farm offered just 15 percent of replacement costs to Michele and Tim Ray, whose house was wrecked by a tornado in April 2006. A contractor estimated the cost to rebuild the Hendersonville, Tennessee, home at \$254,000. State Farm made three inspections of the property, Ray says, and sent the Rays a check for \$36,000, which the couple returned. A year after the twister, the couple remained in the damaged home, with their tattered roof covered by tarpaulins. In April, after Bloomberg News submitted questions to State Farm about the Ray case, the company inspected the house again. This time, it gave the Rays \$302,000. "We decided to call it a total loss and agreed to pay the policy limits after deciding the damage was caused by the storm," State Farm spokesman Shawn Johnson says.

State Farm won't discuss what role McKinsey played in helping the insurer shape its approach toward customers. Similarly, no official at any insurer that hired McKinsey is willing to talk about the consulting firm.

Privately held McKinsey, which has 14,000 employees in 40 countries, has worked for many of the largest companies in the world, according to its Web site. "We take pride in doing what is right rather than what is right for the profitability of our firm," Managing Director Ian Davis says in a quote posted on the site.

McKinsey pioneered the overhaul of the property casualty industry at Allstate. The com-

pany hired McKinsey in 1992 after the insurer was spun off from what's now Sears Holdings Corp. of Hoffman Estates, Illinois, says David Berardinelli, a Santa Fe, New Mexico, lawyer who won access to view the McKinsey documents for a limited time during a lawsuit involving an auto accident. McKinsey advised the insurer to pay claims quickly at low amounts while delaying payments for as long as possible for those who wanted large settlements, Berardinelli says. "They're capitalizing on the vulnerability of people," he says.

Berardinelli says McKinsey suggested that Allstate hold so-called town hall meetings with claims adjusters to urge them to pay less to customers.

Shannon Kmatz, a former Allstate claims adjuster, says she attended some of those sessions. She says managers told employees to keep claim payouts as low as possible. "The leaders of those town hall meetings were always concerned that we were doing our part to help the stock price by keeping claims down," says Kmatz, 34, who worked for Allstate for three years in New Mexico in the late 1990s and is now a police officer. "It was obvious from the get-go that all they were concerned about was the bottom line."

Just once, at the May 2005 hearing in Lexington, Kentucky, the PowerPoint slides McKinsey prepared for Allstate were made public. William Hager and his wife, Geneva, who suffered neck and back injuries after the family's car was rear-ended in a 1997 accident in Lexington, sued the insurer, claiming the

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Insurers secret tactics to cheat...

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Blame it on the rain

Hubert and Joyce Smith found that the engineering report on damage to their Mississippi home had been altered to say that water, not wind, was the cause—which Meritplan Insurance used as the reason to reject their claim.

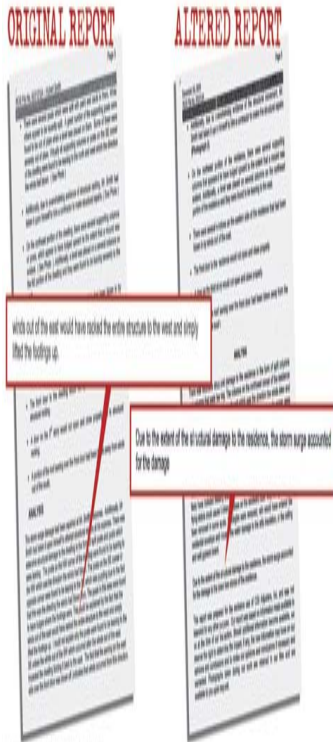


Image depicting report altered by Meritplan Insurance

company failed to cover her medical expenses. The case is scheduled to go to trial in October.

One McKinsey slide prepared for Allstate was called "Zero-Sum Economic Game," a videotape of the court hearing shows. The slide explains that there are winners and losers, and the insurance company can win by paying out small amounts. "There is a finite pool of money," Golden, the plaintiffs attorney, told the judge at the hearing. "Either it goes to the injured victim or it goes to Allstate's pocket as surplus."

Allstate's attorney at the hearing, Mindy Barfield of Lexington, didn't say anything about the McKinsey slides. She didn't return phone calls seeking her comments.

Former federal flood insurance commissioner Hunter says the McKinsey approach exploits policyholders. "McKinsey presented it as a zero-sum game in which the winners would be Allstate and the losers would be the claimants," Hunter says. "I don't think a claims system should be viewed in that light. It's against any principles on how you should settle insurance claims. They should be settled on their merits."

Allstate convinced the judge to seal the McKinsey slides before and after the Lexington hearing. The insurer has resisted attempts to make the consulting firm's work public in courts across the U.S., arguing it contains trade secrets. In 2004, the company was sanctioned by the Bartholomew Circuit Court in Indiana and fined \$10,000 for refusing to turn over the records to attorney Richard Enyon, representing an auto accident victim. Allstate held on to the documents and appealed the pun-

ishment. The 7th Circuit Court of Appeals upheld the sanction. Allstate then appealed to the Indiana Supreme Court, which hasn't yet made a decision.

Lawsuits in California, Florida and Texas have asserted that McKinsey's work for Allstate helped the insurer cheat claimants. Records show that through the company's Claim Core Process Redesign project, Allstate encouraged policyholders to accept small settlements on the spot.

The redesign also became a blueprint for fighting more claims in court as Allstate increased its legal staff, according to a 1997 company newsletter obtained by David Poore, a Petaluma, California, attorney who has represented homeowners in lawsuits against carriers. "The bottom line is that Allstate is trying more cases than ever before," the newsletter said. "If the offer is not accepted, Allstate will go to court, if necessary, to prove the evaluation process is sound."

McKinsey-style tactics have spread to insurers large and small--as homeowners discovered after three wildfires ravaged Southern California in 2003, including the one that hit northern San Diego. While Katrina struck thousands of low-income families in New Orleans, the San Diego fire affected mostly affluent homeowners, who fared no better with their insurance companies.

The fire obliterated large sections of Scripps Ranch, a community of 30,000 that sits atop a sagebrush and eucalyptus mesa, where homes can cost more than \$1 million. After flames swept through the area on winds of up to 50 miles per hour, residents say they expected their insurance

companies to live up to coverage promises and pay the full cost to rebuild. The Southern California fires led to 676 formal complaints to the state saying insurers offered payouts that fell far short of actual costs and delayed on paying claims.

One of the Scripps Ranch houses that went up in flames, a four-bedroom, gray-stucco home on a sloping cul-de-sac, belonged to J.P. Lapeyre, a division director at JDS Uniphase Corp., a Milpitas, California, maker of telecommunications equipment.

Lapeyre, 41, who is married and has two children, says he had no inkling as he viewed the remains of his house that his insurance would leave him \$280,000 short of what he would need to rebuild. Representatives of Pacific Specialty Insurance Co. of Menlo Park, California, told him the most the firm would pay out was \$168,075, not even half of the estimated reconstruction cost of \$448,000.

The Pacific Specialty representative told Lapeyre in November 2003 that the insurer would pay \$75 a square foot (0.09 square meter) to rebuild his 2,241-square-foot house. "What frustration," Lapeyre says. "I had to try to prove to them that it would cost \$200 a square foot." That figure came separately from two builders, Norton Construction and TLC Contractors, both of San Diego. In February 2005, Lapeyre filed suit in San Diego County Superior Court against his insurer and the independent broker who sold him the policy, alleging negligence, breach of contract and fraud for leading him to believe that

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Insurers secret tactics to cheat...

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Cheating policyholders may be robbery but it's rarely a crime. State insurance departments don't prosecute and currently, the federal government has no oversight.

Insurers aim to keep it that way which is why they spent nearly \$100 million on lobbying in Washington in 2006.

he was properly covered. After a fight of 19 months, Lapeyre dropped the suit when Pacific Specialty told a mediator assigned to the case it wouldn't raise its offer, he says. "We decided it was time to get on with our lives and move forward," says Lapeyre, who borrowed money to build a new house.

Karen and Bill Reimus, both lawyers, fought their carrier, Liberty Mutual Insurance Co., when it told them it wouldn't pay the couple enough to rebuild their burned Scripps Ranch house. Karen, 40, says an agent for Boston-based Liberty Mutual assured her and her husband when they bought their house four months before the 2003 fire that their insurance would replace the home if it were destroyed.

In a December 2003 letter, two months after the fire, Liberty Mutual offered to pay \$40,000 less than the limit of the couple's policy, Karen says. In early 2004, San Diego-based Gafcon Construction Consultants determined the cost to rebuild was well above the limits of the couple's policy.

The Reimuses began a phone and letter campaign to convince the company its offer was too low, Karen says. "It has now been almost seven months since the loss and we are still not agreed as to the numbers," Karen wrote in a May 13, 2004, letter to Liberty Mutual.

Two weeks later, Liberty Mutual agreed to raise the couple's limits by \$100,000, Karen says. "This is clear evidence that the original estimate was a low ball," she says. Liberty Mutual spokesman Glenn Greenberg says the company won't discuss

the case because its dealings with policyholders are private.

"The system is set up to take advantage of people when they're at their weakest," Karen says. "We went to one of the most-expensive companies in the country because we wanted to be ready for a rainy day. We asked for coverage that would replace the house. We thought replacement meant replacement." Scripps Ranch couple Leslie Mukau and Robin Seaberg sued Allstate for alleged fraud and negligence for failing to pay the \$900,000 that contractors estimate it would cost to replace their two-story home. Allstate offered the Seabergs \$311,000, according to the 2004 San Diego County Superior Court suit. Allstate says in court papers the couple hasn't shown the company was negligent and asked for dismissal of the suit, which is pending.

The California Department of Insurance examined the practices of Allied Property & Casualty Insurance Co., AMCO Insurance Co. and Allstate in connection with the California fires. It fined Allied and AMCO, both based in Des Moines, Iowa, a total of \$20,000 for misleading nine policyholders into believing they were insured for full value. The regulators cited Allstate for six rule violations, including that it ignored complaints that it underinsured homeowners. The state didn't fine Allstate, which told the department it had done nothing wrong.

"Fines by state regulatory agencies have been far too small and infrequent to deter unfair business practices," United Policyholders' Bach says. "It's clear that cheating by insurers is a big, profitable business and regulators can't muster the will or political

strength to stop them."

Most homeowners take what insurers offer because they don't realize they're being deceived or conclude that fighting is too costly and difficult, Bach says. "Virtually everyone who settles for what the insurer offers is taking less than they're owed," she says.

Homeowners across the U.S. have found themselves in the same situation. Kevin Hazlett, a lawyer, sued Farmers Group after an April 2006 tornado struck his home in O'Fallon, Illinois. Farmers had offered to pay him \$470,000 to rebuild the house. Royal Construction Inc., based in Collinsville, Illinois, estimated the cost at \$1.1 million. Hazlett, 52, accepted a settlement for an undisclosed amount.

Hazlett says Illinois Farmers, a subsidiary of Farmers, used the Xactimate software program to first determine what it would pay out. "They're just pulling numbers out of thin air," he says. "There's no rhyme or reason." Farmers spokesman Jerry Davies didn't respond to requests for an interview.

Bo Chessor, owner of Royal Construction, says he sees insurers refusing to pay coverage limits all the time. "Most people just roll over and take it because they don't have the money to fight it," Chessor says. "What the insurance companies are doing is purely robbery."

It may be robbery, but it's rarely a crime. State insurance departments don't prosecute insurance companies, and the federal government has no oversight. The insurance industry wants to keep it that

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Insurers secret tactics to cheat...

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It may interest readers to know that State Farm has thrown a complete hissy-fit over this article.

They claim the media is out to get them.

Unfortunately, from where we sit, POA believes this article is a wonderful example of well-researched and factual reporting.

way. To make their voice heard on federal regulation and other government decisions, insurers spent \$98 million on lobbying in Washington in 2006, according to Political-MoneyLine, a unit of Congressional Quarterly. That's the second-largest amount spent on lobbying by any group, behind \$114.4 million by pharmaceutical companies.

Property-casualty companies do want something from the government: bailouts. Insurers beseech states and the federal government to foot more of the bill for rebuilding private homes after natural disasters. Florida has a catastrophe fund that insures some homes to reduce payouts by carriers. The fund paid out about \$8.45 billion for storm damage in 2004 and '05, according to its annual report. The federal flood insurance program covers \$800 billion of property nationally, which helped the industry increase profits by 25 percent in 2005, the year of Katrina.

Homeowners whose properties

have been destroyed by catastrophes contend with low payouts, higher premiums, software programs that underestimate rebuilding costs and sudden changes in policy values--all of which have been calculated methods for insurers to increase profits.

Tunnell, the San Diego accounting teacher whose home burned to the ground, says she thought State Farm had adequately insured her family when they bought their three-bedroom house in 1992. She says the policy, destroyed in the fire, provided for "full replacement coverage." It guaranteed to rebuild the house, no matter the cost, she says. The company offered to pay \$220,000--which was \$121,600 less than a \$306,000 figure her family got from State Farm's own estimator, Hersum Construction Inc. of San Diego, for rebuilding the 1,700-square-foot house.

State Farm spokesman Supple says the company sent letters in 1997 to the Tunnells and

other policyholders saying that it would no longer offer full replacement coverage. "Policyholders, by regulatory order, were sent prominent notices of the coverage change at that time," he says. Tunnell says she doesn't recall being notified. She says her family debated hiring a lawyer and suing, and eventually decided the battle would be too stressful. The Tunnells took the \$220,000 and borrowed money to build a new house.

"Why is this happening to people over and over again?" Tunnell asks. "State Farm keeps underinsuring people, and they get away with it. This is unthinkable." As long as insurers make the rules and control the game, Tunnell and homeowners across the U.S. won't know whether their homes are fully insured, no matter what their policies say.

David Dietz is a senior writer at Bloomberg News in San Francisco.

Testing ...

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If you fall into any of these categories, documentation must or needs to occur:

- ◆ homebuyer who wants to make certain you're not buying a lemon or if so, negotiate a lesser price to reflect the needed repairs,
- ◆ homeowner who wants to use the defect as a means of reducing property taxes,
- ◆ plaintiff in a lawsuit involving mold,
- ◆ policyholder who has already made a mold-related claim, or
- ◆ renter or occupant who is not the property owner.

Any homebuyer, renter or person appealing the property values needs documentation in order to negotiate with the owner, landlord or County Assessor's office, respectively. Anyone embroiled in litigation has no choice but to make public the results if the suit involves mold because testing results would be an integral part of the case. A policyholder who files a mold-related water damage claim is subject to CLUE -- a database of claims loss histories, over the course of five years, on properties and policyholders. Like it or not, a paper trail or evidence will exist.

[CLICK HERE](#) for discounted testing options that provide property-specific evidence.

If you decide to test a property, go into it with both eyes open, know the consequences of testing and weigh the many benefits before you bite off on it.



Correction of central nervous system metabolic abnormalities, deficits in executive cognitive functioning and elevated C4a: a clinical trial using low dose erythropoietin in patients sickened by exposure to water-damaged buildings (WDB)

Ritchie C. Shoemaker, MD¹, Margaret S. Maizel¹ ¹ Center for Research on Biotxin Associated Illnesses

Recent literature has demonstrated that erythropoietin (epo) is a neuroprotective agent for peripheral and central nervous system (CNS) that specifically prevents apoptosis of glial cells, improves capillary hypoperfusion in CNS and lowers elevated lactate in CNS. Previous treatment studies of patients made ill solely by exposure to WDB ("mold illness") with refractory executive cognitive symptoms and persistently elevated levels of C4a, a product of activation of complement, using epo safely lowers C4a and reduces neurocognitive symptoms. A prospective open label clinical trial was performed to assess (1) safety of epo in mold illness patients who have elevated C4a; (2) efficacy of epo to improve

symptoms, reduce C4a and correct abnormalities in CNS metabolites measured by magnetic resonance spectroscopy (MRS); (3) provide data that supports a testable hypothesis of the inflammatory origin of systemic and CNS symptoms in these patients.

32 patients with mold illness provided informed consent for an IRB-approved study. Symptoms of executive cognitive function, C4a and MRS of 1 cubic cm areas of left and right frontal lobes and left and right hippocampus before and after treatment with 5 doses of 8000 units of epo given by the study physician over 2 weeks were compared to known controls. Symptoms, C4a and safety parameters were recorded at each visit.

After 5 doses of epo, repeat MRS was performed.

Epo use did not cause adverse effects: No adverse effects of clotting, elevation of blood pressure, polycythemia or development of iron deficiency anemia occurred. Symptoms of executive cognitive function were reduced in cases after treatment, though still exceeding controls. C4a was reduced beginning after the second dose of epo, achieving values equal to controls in 91% of cases. MRS-determined values of n-acetyl acetate; creatine; choline and myoinositol did not change in cases and equaled controls. Lactate was elevated in all patients, with reduction after epo to controls in 88%. Ratios of gluta-

mate to glutamine were abnormal in all cases, with reduction to controls achieved in 75%.

Use of low dose epo in mold illness patients is safe and effective to improve symptoms, C4a and CNS markers of abnormal capillary hypoperfusion (lactate); and excitatory neurotransmission (glutamate/glutamine). These results suggest that the systemic inflammation in mold illness caused by elevated C4a may be treated using epo and that the CNS correlates of cognitive dysfunction has an inflammatory basis. A double blinded, placebo controlled trial is planned.

Defining mold illness in children: a chronic inflammatory illness with distinctive biomarkers

Ritchie C. Shoemaker, MD¹, Margaret S. Maizel¹ Center for Research on Biotxin Associated Illnesses

Study of illness acquired following exposure of children to water-damaged buildings (WDB) has been hampered by absence of a case definition. Adults are defined by a two-tier model that includes (1) potential for exposure, presence of multiple symptoms from multiple organ systems and absence of confounders; and (2) presence of three of six objective parameters including reduced level of alpha melanocyte stimulating hormone (MSH); presence of a particular HLA DR haplotype; elevated MMP9; presence of a particular deficit in visual contrast testing (VCS); and dysregulation of ACTH/cortisol or ADH/osmolality. Tier 1 also applies to children. Tier 2 criteria required modification, as chil-

dren may be unable to perform VCS testing and hypothalamic/pituitary axis immaturity may be present. We surveyed symptoms and lab results from known cases and controls from one practice to identify factors to correctly classify all cases and controls.

144 known pediatric cases with illness and 47 control patients were analyzed by chart review. Significant differences in symptoms, MSH, HLA DR by PCR and MMP9 were identified. Significant differences in incidence of antibodies (IgA and IgG) to gliadin as well as autoantibodies to cardiolipin (IgA, IgM and IgG) were identified. Cases were stratified by abil-

ity to perform VCS testing, as before age 8 most children couldn't perform VCS consistently. By age 8, nearly all children could perform VCS. Levels of C4a, a split product of complement activation were significantly different. Higher than 2830 ng/ml also were significantly different in cases compared to controls.

Symptoms were analyzed by logistic regression, correctly classifying 189 of 191 patients. VCS deficits (N=110) correctly classified 102 of 110 patients. MSH levels < 35 pg/ml were found in 127 of 133 cases and 2 of 23 controls. MMP9 levels > 332 ng/ml were present in 100 of 105 cases and in 5 of 20 controls. Gliadin antibodies

were found in 58% of cases and in no controls; autoantibodies to cardiolipin were found in 27% of cases and in no controls. C4a > 2830 was found in 33/33 cases and in 1/8 controls.

Using HLA, MSH, antibodies to gliadin or cardiolipin, MMP9, VCS, all cases were identified and all controls were identified correctly (N=110). For those unable to perform VCS, presence of 2 or 5 criteria identified all cases and controls correctly (N=71). These Tier 2 requirements will possibly be enhanced by adding C4a values in those unable to perform VCS testing.

Sequential upregulation of innate immune responses during acute acquisition of illness in patients exposed prospectively to water-damaged buildings (WDB) Ritchie C. Shoemaker, MD¹, Margaret S. Maizel¹

¹ Center for Research on Biototoxin Associated Illnesses

Previous data demonstrated a pattern of innate immune inflammatory responses following re-exposure of patients made ill previously by exposure to a given WDB with evidence of amplified growth or toxigenic organisms, including fungi. This report expands those observations, using a prospective model that confirms causation of illness by exposure marked by upregulation of innate response elements measured daily following re-exposure including complement activation product C4a, leptin, MMP9, vascular endothelial growth factor (VEGF) and coagulation factors.

Following consent, 60 patients known to have a chronic biotoxin illness caused by exposure to a WDB followed a five step process: assessments of (i) symptoms (ii) VCS (iii) C4a (iv) leptin (v)

MMP9 (vi) VEGF (vii) Factor VIII (viii) vWF (ix) vWF Ag were carried out at (1) baseline; (2) after first therapy with cholestyramine (CSM) (3) off CSM, without re-exposure for three days (4) after each of three days following re-exposure to suspected WDB (5) after second CSM treatment. Results were compared to known controls.

In patients (N=38) with illness recrudescence, upregulation of innate immune elements was observed: C4a increased after 24 hours; leptin increased after 24 hours; MMP9 increased after 48 hours; VEGF initially increased after 24 hours, falling after 72 hours. Factor VIII fell concomitantly with the rise in C4a; vWF fell after 72 hours. Episodes of epistaxis or hemoptysis were observed in 6 patients, coinciding with fall of vWF. Symptoms and VCS

decline increased daily during re-exposure, reaching baseline levels after three days. Patients (N=22) without recrudescence showed no changes and equaled controls. Buildings with repeat illness patients continued to have evidence of ongoing water intrusion; sites without reacquisition had no evidence of ongoing water intrusion.

Re-exposure to WDB causes illness that can be identified by sequential changes in symptoms, VCS and innate immune responses. Use of sequential observation of symptoms, visual contrast sensitivity (VCS) and inflammatory responses following re-exposure to WDB can not only supports a model of disease mechanisms but can rapidly determine safety for re-occupancy.

Mold Remediation is tax deductible

Did you know that if you are a landlord or a homeowner and you have to have mold removed from your home, it is tax deductible? It qualifies as a repair that has to be done to protect the investment of your home.

The costs that you will incur from removing mold from your home or your business can be quite great, depending on the size of the infection. Sometimes a quarter, half, or even a whole wall or more has to be removed, not to mention the cost of the chemicals and personal protection equipment necessary to do the job safely.

The Internal Revenue Service—IRS has concluded that the cost of mold removal and remediation are tax deductible as an ordinary

and necessary business expense. This is a requirement that must be met before something can be deducted as a business expense: it must be both ordinary and necessary.

Renovations that increase the value of a home or other building cannot be counted as business expenses, but the removal of mold is necessary because the health of the workers and anyone else in the building will be affected, thus affecting the flow of cash into the business. Mold remediation does not add value to the property, so it is fine to count it as tax deductible at the end of the year, even if it is not a business that is being treated. Unfortunately, if the mold

remediation is the part of a renovation plan that includes the entire property, then the cost is required to be capitalized instead of deducted from your taxes at the end of the year.

So, just what is deductible? If you hire a professional service to do it for you, then the total of whatever they billed you after the project was completed is what you would write down as your deduction at the end of the year. Also, any building materials that you have to purchase after the mold removal are tax deductible, as well. These are necessary to complete the repairs.

It is also possible any relocation expenses that you or your



family might incur while the mold remediation is taking place may be deductible, as well. Contact whoever prepares your taxes for you and ask them if it may be deductible.

If you play your cards right, you should be able to deduct most of the cost of your mold remediation, as long as it is not part of a larger renovation of the property.

Jim Corkern is a writer and respected contributor to the Water damage restoration and mold remediation Industry.

Bankers' Group Revisits Effects of Mold on Real Estate

by Al Heavens

Concerns about mold and its potential effects on indoor air quality and property values appear to have taken a back seat to other real estate issues, but that doesn't mean that someone isn't thinking about.

For example, the Mortgage Bankers Association last week published an update of a white paper on the effects of mold in the commercial and multifamily realm, "to reflect the most current information on mold mitigation, standards for conducting mold assessments, legal issues and insurance issues."

Don Glitz, corporate insurance risk manager of Capmark Financial Group, explained that the update was "an attempt to eliminate the 'misinformation' that exists with regard to the mold issue."

The update, the bankers' group cautioned, is only a "snapshot," since, as with many environmental issues, changes in the way mold is viewed and handled can occur frequently with research.

The reason for the continued interest in mold by lenders is obvious. Mold and dampness can directly damage buildings and their contents, but there are other repercussions, including a reduction in cash flow through lost rents or rental value and expenditures for remediation costs.

When mold issues are uncovered in a building, whether residential or commercial, there is a perception that the structure has become unfit or unusable, and that can result in a loss of market value.

After Hurricane Katrina, for example, some real estate agents in areas of Louisiana and Mississippi were reporting that many buyers were pulling out of deals if they even minor exterior damage to homes that could result in mold issues.

In addition, as the MBA white paper, points out, there are costs of litigation with tenants, purchasers of property or persons who claim to have been injured.

The chief concern has been with black mold. While less common than other molds, this one is more dangerous to humans because, given the proper environmental conditions, it can create multiple toxic chemicals called mycotoxins. These toxic byproducts exist in the spores of the mold, as well as in the tiny fragments that can become airborne. Of particular concern is the threat that humans will inhale and ingest these toxic spores.

According to the Centers for Disease Control and Prevention, there are few case reports that toxic molds inside homes can cause unique or rare health conditions such as pulmonary hemorrhage or memory loss. A causal link between the presence of a toxic mold and these conditions has not been proved, the agency says.

For the last few years, insurance companies have become unwilling to write new policies and have been excluding coverage of mold from existing ones. Such coverage as is available is underwritten as part of a "stand-alone" environmental insurance policy. There has not been any

significant increase in the availability of coverage for mold as more information on it has become available, according to the mortgage bankers team.

Air quality issues "also may act as a negative constraint on a lender's or servicer's decision to foreclose and resell, continue operations or abandon property," the mortgage bankers' group observed.

Even before Hurricanes Katrina and Rita, New Orleans' mold problems were out of control, owing to the region's humid climate. With so much standing water for so many weeks and months, and no way to dry things out quickly, "you're able to find just about every variety of it," said Frank Panico, who is an expert on flood and fire cleanup issues.

That's why the best course of action when mold or moisture is found is to take care of the problem quickly, the MBA said.

Avoidance or reduction of mold risks begins at the moment the first sketch for a new structure is put on paper and involves proper selection and use of professionals, contract terms, contractors, subcontractors, design and engineering professionals, materials and construction techniques, as well as ongoing inspection, documentation and a complete moisture-management assessment plan.

For existing buildings, mold cleanup first requires elimination of moisture that is fueling the mold growth. The next step is to conduct a detailed visual inspection of the affected area to en-



Mortgage lending on poorly repaired homes is a house of cards. If insurers deny proper repairs, the loans are not worth the paper they're written on.

sure that the full extent of an outbreak is determined and additionally to demonstrate that an outbreak is in fact limited in scope or severity.

Mold and materials technology continue to become more effective. There are continuing developments in technology to detect hidden moisture as well as new or improved building materials that are immune to or resist mold attack.

This may lower remediation costs and increase confidence in the effectiveness of the cleanup work that has been done.

[CLICK HERE FOR REPORT](#)

UF to lead research on life-threatening fungus

Tuesday, July 31, 2007. GAINESVILLE, Fla. — Hear the word fungus, and mushrooms and mold might leap to mind. But the University of Florida is about to house the nation's first research repository for one species that has nothing to do with pizza toppings or marbling blue cheese: *Aspergillus*, which increasingly poses a major health threat to cancer patients and transplant recipients.

The National Institutes of Health has awarded \$9 million over the next seven years to the effort. UF researchers are collaborating with colleagues at Duke University, Brigham and Women's Hospital in Boston and the Dana-Farber Cancer Institute, who will funnel patients' respiratory, urine and blood samples to UF. The repository will support research aimed at learning more about the fungus and efforts to develop more accurate tests to detect it in patients.

"*Aspergillus* is everywhere, particularly in the air we breathe; all of us breathe it in all the time," said principal investigator John Wingard, M.D., director of UF's blood and marrow transplant program and deputy director of the UF Shands Cancer Center. "On a windy day, especially in a dusty environment or every time some dirt gets moved around, lots of these organisms get aerosolized."

The number of people contracting *Aspergillus* infections jumped enormously in the 1990s, Wingard said, and those with weakened immune systems are particularly susceptible. *Aspergillus* is the leading cause of death from infection in bone marrow transplant and leukemia patients, as well as among those who receive certain other solid organ transplants,

he said. About 15 percent of all bone marrow transplant patients, for example, will develop an infection from *Aspergillus*; of those, about two-thirds die.

"We haven't had good treatments, we haven't had good prevention methods and, most importantly, we haven't had good diagnostic methods to identify which patients have these infections," Wingard said. "Since we often don't recognize that patients have aspergillosis until very late in the course of the infection, by the time we try to treat the infection it is often so advanced we have very poor prospects of bringing it under control."

A number of hospitals undergoing renovations have experienced outbreaks, in many cases after the organism contaminated ventilation systems or fireproofing materials. Despite hospitals' infection control measures aimed at minimizing risks, including special air filtration systems designed to filter out *Aspergillus* and other infectious agents, facilities can still have problems and sometimes have even had to temporarily close their patient-care units.

"You and I have a good healthy defense, so while we may be colonized by the organisms, we rarely get serious infections," Wingard said. "But if we become immunocompromised, those organisms can be deposited on the mucosal surface of nasal passages, the sinuses and the bronchi, and they can start invading and can cause very serious, deadly infections."

Complicating the picture is that aspergillosis is frequently mistaken for bacterial pneumonia, and tests for the infection often are initially negative.

"Historically, our only means

of diagnosing these infections has been by growing the organism from patient's specimens in the laboratory and then having it identified by an experienced mycologist," said Barbara D. Alexander, M.D., the project's co-principal investigator and director of transplant infectious diseases services and the clinical mycology laboratory at Duke University Medical Center. "These conventional methods for diagnosing fungal disease are slow and lack sensitivity. Furthermore, many times the patients are too sick to tolerate the invasive procedures, such as lung biopsy, in order to obtain the samples for laboratory testing."

Wingard said two-thirds of the time tests are negative even though patients have the infection.

"That's the biggest challenge — we may suspect patients have the infection but we can't really know with certainty from currently available tests whether they truly are infected or not," he said. "We end up making clinical decisions about using drugs that may be toxic or using the wrong drugs in patients when we are not sure whether they have this deadly infection."

Officials are hoping to collect samples from about 200 patients a year for the next seven years to better characterize the fungus and improve the diagnostic accuracy and speed of tests used to detect aspergillosis. The repository will include samples from patients with confirmed infections that will be compared with samples from patients whose diagnosis is less clear and with samples from patients who are at high-risk but not infected.

Researchers also will work with Emory University, Indianapolis-based MiraVista Diagnostics, and the University

of Manchester in England to evaluate existing tests and develop new, more accurate and less invasive ones.

While more potent treatment regimens are improving prospects for patients, so-called emerging pathogens — viruses, bacteria and fungi — are a growing medical problem, Wingard said.

"With advancing medical technology and more powerful antibiotics, patients are living longer," he said. "We have a growing population of patients who are susceptible to very serious infections by viruses, bacteria and fungi that in years past were not medical problems."

The number of people contracting *Aspergillus* infections jumped enormously in the 1990s .

Diagnosis is very difficult and is often mistaken for something else.

The wrong drugs are often prescribed.

And Now, The Rest Of The Story . . . About The McDonald's Coffee Lawsuit

By Kevin G. Cain

We have probably all heard someone say, "Watch out! That coffee is hot. You could have a lawsuit on your hands." Somehow, somewhere along the way, the McDonald's coffee lawsuit became the poster child for frivolous lawsuits. Who hasn't taken a crack at this lawsuit for the sake of furthering their own cause? David Letterman and numerous other comedians have exploited this case as the punch-line to countless jokes. One of my favorite Seinfeld episodes involves Cosmo Kramer suing Java World after Kramer spills a cup of café latté on himself while trying to get a seat at a movie theater. Kramer suffers from minor burns that are easily remedied after a single application of a balm given to Kramer by the Maestro. Kramer asks his favorite attorney, Jackie Chiles, if the fact that he tried to sneak the coffee into the theater is going to be a problem in their lawsuit. Jackie responds, "Yeah, that's going to be a problem. It's gonna be a problem for them. This is a clear violation of your rights as a consumer. It's an infringement on your constitutional rights. It's outrageous, egregious, preposterous." When Kramer asks if this lawsuit has a chance, Jackie responds, "Do we have a chance? You get me one coffee drinker on that jury, you gonna walk outta there a rich man." Of course, Elaine is less than supportive when she finds out about Kramer's latest lawsuit and quips, "What I mean is who ever heard of this anyway? Suing a company because their coffee is too hot? Coffee is supposed to be hot." Obviously, Jerry and company are taking their own shots at the McDonald's lawsuit in particular, and at frivolous lawsuits in general.

"I mean, come on! If ever

there was a frivolous lawsuit, this is it. Right? It's coffee, it's hot, and someone got burned. Why should someone get rich off of coffee being hot? Some lady gets millions, and all I ever get for drinking coffee that is too hot is a mild blister in my mouth and the obligatory caffeine buzz that I expect in the morning with my coffee." It seems that nearly everyone has an opinion about frivolous lawsuits. This author recently removed a box containing class handouts sitting on the floor in the middle of an entryway into a Bible classroom and asked the person who put the box there if he minded my moving the box because someone could accidentally get hurt. The person responded (knowing that I was an attorney) by simply snorting as he walked away, "I think everyone who files a frivolous lawsuit should be shot." "Objection, non-responsive," I thought, but you get the point. All too often there does not appear to be much we can do to change people's opinions on this subject. Or is there?

"Just the facts ma'am; just the facts." A line made famous by Dragnet's Sergeant Joe Friday may be the answer. Unfortunately, people often refuse to let the facts alter their points of view. "I have my opinion, and I won't let truth, reality, or the facts get in the way." However, if people really knew the true facts about the McDonald's lawsuit, few would have the same opinion (or misconception) that they carry around today. Let's be honest. Most people, attorneys included, know little to nothing about the infamous McDonald's lawsuit other than the last joke they heard about it. A woman spilled some McDonald's coffee on herself, got burned, and got millions of dollars. That is about all most of us know about this woman

and her legendary lawsuit. And yet many uninformed people have very strong opinions on this case. Well, as Paul Harvey says, "And now, the rest of the story."

Liebeck v. McDonald's Restaurants

Seventy-nine-year-old Stella Liebeck of Albuquerque, New Mexico, was sitting in the passenger seat when her grandson drove his car through a McDonald's drive through window in February 1992. Liebeck ordered coffee that was served in a McDonald's styrofoam cup. After receiving the order, the grandson pulled his car forward and stopped for his grandmother to add sugar and cream to her coffee. (The rumors of Liebeck spilling her coffee while driving were inaccurate. The car was not moving, and she was not driving.) While parked, Ms. Liebeck placed the cup between her knees and attempted to remove the plastic lid from the cup. As she attempted to remove the lid, the contents of the cup spilled into her lap. The coffee was estimated to be somewhere between 180 to 190 degrees. Ms. Liebeck was wearing sweatpants that day, which absorbed the scorching coffee, holding it next to her skin. A vascular surgeon diagnosed Liebeck as having suffered full thickness burns (or third-degree burns) over her inner thighs, perineum, buttocks, and genital and groin areas. These third degree burns extended through to Liebeck's subcutaneous fat, muscle, or bone. While she was hospitalized for eight days, Liebeck underwent skin grafting, and later underwent debridement treatments. Liebeck was permanently disfigured and disabled for two years as a result of this incident.



Ms. Liebeck, a retired department store clerk, informed McDonald's of her accident and requested that McDonald's pay for her medical expenses totaling approximately \$11,000. McDonald's refused. With no other recourse in sight, Ms. Liebeck retained an attorney from Houston named Morgan Reed who had filed a similar hot-coffee lawsuit against McDonald's in 1986. Mr. Reed's prior case against McDonald's involved a Houston woman who suffered third-degree burns from McDonald's coffee. In that 1986 case, Mr. Morgan deposed Christopher Appleton, a McDonald's quality assurance manager, who testified that "he was aware of this risk . . . and had no plans to turn down the heat." McDonald's settled that case for \$27,500.

Before filing suit, Liebeck requested that McDonald's pay \$90,000 for Liebeck's medical expenses and pain and suffering. McDonald's countered with a generous offer of \$800. Ms. Liebeck had never filed a lawsuit before in her life, and she said she never would have filed this lawsuit if McDonald's "hadn't dismissed her request for compensation for pain and medical bills with an offer of \$800."

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McDonald's Coffee Lawsuit...

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Why did McDonald's make their coffee so hot? McDonald's requires that its coffee be prepared at scalding temperatures, based on the recommendations of coffee consultants and industry groups which claim that hot temperatures are necessary to fully extract the full coffee-flavor during the brewing process.

Ms. Liebeck brought suit against McDonald's in 1993 alleging that the coffee she purchased was defective because of its excessive heat and because of inadequate warnings. Punitive damages were also sought based on the allegation that McDonald's acted with conscious indifference for the safety of its customers. As the trial date neared, Liebeck's attorney offered to settle the case on her behalf for \$300,000 and reportedly would have settled for half that amount. A mediator recommended a \$225,000 settlement on the eve of trial, but McDonald's again refused any attempt to settle.

At trial the evidence was simply damning. It was learned that McDonald's was aware of more than 700 claims brought against it between 1982 and 1992 due to people being burned by its coffee. Some of these claims involved third-degree burns that were substantially similar to the burns suffered by Liebeck. Moreover, McDonald's had previously spent over \$500,000 in settling these prior coffee-burn claims. In spite of the knowledge of these claims and this inherent danger with its coffee, McDonald's refused to change its corporate policy and serve its coffee at a safer temperature.

McDonald's own quality assurance manager testified that McDonald's enforced a policy requirement that all coffee be served at 185 degrees, give or take five degrees. He also admitted that its coffee was not "fit for consumption" because it would cause scalding injuries to the mouth and throat if drunk by the consumer.

Q: [Y]ou know, as a matter of fact, that coffee is a hazard, selling it at 180 to 190 degrees, don't you?

A: I have testified before, the fact that this coffee can cause burns.

Q: It is hazardous at this temperature?

A: At that high temperature the coffee is a hazard. . . .

Q: If customers attempt to swallow that coffee, isn't it a fact that it will scald their throat or esophagus?

A: Yes, under those conditions, if they could get the coffee in their throat, that could happen, yes. . . .

The same McDonald's quality assurance manager continued to testify, illustrating McDonald's culpability:

Q: So. . . when somebody buys a cup of coffee and it's sold to them at McDonald's and they go to sit down and drink it in less than five minutes, it's not fit for consumption to drink, if consumption means to drink?.. .

A: It's perfectly fit to open the top and add cream and sugar and really dilute the product as far as temperature goes and it probably would be very fit for consumption. . . .

Q: If you don't mind getting burned it's fit for consumption. My question is, is it fit to be drunk, actually fluid going down your esophagus?

A: I think I already answered that.

Q: And the answer is no, it's not, isn't it?

A: Yes, we answered that.

While coffee at various temperatures has the capacity to inflict burns, the problem with McDonald's coffee is the fast rate at which it could cause such serious burns. McDonald's own expert testified that coffee served above 130 degrees could produce third degree burns; therefore, McDonald's argued, it did not matter whether its coffee

was served at 180 to 190 degrees. However, this argument has some serious flaws that the plaintiff exploited. Charles Baxter, Liebeck's expert in thermodynamics as applied to skin burns, testified that liquids can cause full thickness (third-degree) burns to skin in two to three seconds at 190 degrees, in 12 to 15 seconds at 180 degrees, and in 20 seconds at 160 degrees. Obviously, if Liebeck's coffee had been served just a little less scalding, vital seconds could have been added to her response time to allow her to get out of her grandson's car and disrobe to prevent more serious burns from occurring. Unfortunately, Ms. Liebeck had only about two or three seconds before third-degree burns set in, and the instantaneous damage was already done. Plaintiff's warnings expert, Lila Laux, testified that while people know that coffee is hot, they do not know how severe (i.e., third-degree) these burns can be and how quickly the burns can set in.

An obvious question needs to be asked at this point. Why did McDonald's make their coffee so hot? If this danger of scalding customers was known and could be easily remedied, then why not simply reduce the temperature of its coffee? That question was answered at trial. McDonald's requires that its coffee be prepared at scalding temperatures, based on the recommendations of coffee consultants and industry groups which claim that hot temperatures are necessary to fully extract the full coffee-flavor during the brewing process. McDonald's operations and training manual states that its coffee must be brewed at 195 to 205 degrees and held at 180 to 190 degrees for optimal taste. Keep in mind that water

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McDonald's Coffee Lawsuit...

boils at 212 degrees Fahrenheit. Hence, the reason for preparing the coffee at near boiling temperatures was to optimize the taste. Besides, one billion annual McDonald's coffee drinkers cannot all be wrong, can they?

McDonald's knew that its coffee was being served at extremely hot temperatures, but market research told them that McDonald's customers "want hot coffee, they want it steamy hot, and they expect to get it that way." McDonald's indifference to customer safety is evident in the following testimony from McDonald's quality assurance manager:

Q: Isn't it a fact that back in 1988, when I showed you the pictures of the young lady that was burned in that situation, that you were appalled and surprised that coffee could cause that kind of burn?

A: Yes, I had never seen photographs like that before.

Q: All right. In those six years, you still have not attempted, yourself, or know of anyone within the corporation that has attempted to find out the rate of speed, the lack of margin of safety in serving coffee at this temperature right...

A: No, we have not.

McDonald's continued to demonstrate this same corporate indifference. McDonald's human factors engineer, Dr. P. Robert Knaff, testified that the number of hot coffee burns that occur are "statistically insignificant" when compared to the billion cups of coffee McDonald's sells annually. This callousness was further demonstrated by the testimony of McDonald's quality assurance manager, who stated:

Q: So a fair way to assess your reasoning is, "A few people are being seriously burned with deep second and third degree burns requiring hospitalization, but out of the billions of cups of coffee we sell, there's not been enough burned to where we need to stop selling it that hot?"

A: There's a very low probability of an accident as a result of using the product and we know that the customers want the product hot so we're at this time continuing with our current practice. . . .

Q: Mr. Appleton, do you know how McDonald's Corporation informs itself of the severity of the burns that are recorded on Plaintiff's Exhibit No. 3? Do you know what they do to ascertain how serious those burns are?

A: I'm not intimately familiar with the process. I believe it's handled through our insurance company.

Q: So for you to say that you haven't formulated a conclusion that there have been enough severe burns to warrant turning down the temperature on your coffee, you are speaking without knowledge of the extent and severity of the burns that were reflected in those computer printouts, is that right?

A: I think that I don't think we have a good measure of the severity of each of these.

Q: Well, I'm curious because I've shown you recordings here of some 700 people here that have been burned. Obviously, to you 700 people burned is not a significantly high enough number to turn down the heat. Do you have in mind a number of how many people would have to be burned for you to become so concerned that you would insist that burn specialists be consulted and

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something be done to sell this coffee at a lower temperature?

A: No, I don't have a number in mind.

At trial, McDonald's argued that Liebeck contributed to her own injuries by placing the coffee cup between her legs and by not removing her clothing promptly after the spill. McDonald's further alleged that the severe nature of the burns suffered by Ms. Liebeck were worse than usual because of her older skin making her more vulnerable to more serious injuries. A McDonald's executive testified that McDonald's had chosen not to warn its customers of the possible severe burns its coffee could cause because "(t)here are more serious dangers in restaurants." McDonald's human factors engineer admitted that the number of hot coffee burns suffered by McDonald's customers are "statistically insignificant" in comparison to the one billion cups of coffee sold by McDonald's each year.

After seven days of evidence, testimony, and arguments of counsel, the jury retired to deliberate. The jury determined McDonald's was liable on the claims of product defect, breach of the implied warranty of merchantability, and breach of the implied warranty of fitness for particular purpose. The jury further determined that Ms. Liebeck's injuries merited an award of \$200,000 compensatory damages. However, because the jury found that Ms. Liebeck was 20% at fault, that award was reduced proportionately to \$160,000. Finally, the jury awarded Ms. Liebeck \$2.7 million in punitive damages based on its finding of willful, reckless, malicious, or wanton conduct. The amount of \$2.7 million was arrived at based on evidence the jury heard that McDonald's daily coffee reve-



nues amounted to approximately \$1.34 million. These exemplary damages represented about two days worth of McDonald's coffee revenues. However, a fact that rarely ever makes headlines (in this case, or in any allegedly "fraudulent" lawsuit) is that the punitive damages were reduced by the trial court to \$480,000 (three times the compensatory damages) for a total award of \$640,000. Judge Robert H. Scott, who presided over this trial, stated in regard to the reduced punitive damages award:

I think that there was evidence and argument about the Defendant's knowledge that the coffee could cause serious, third degree, full tissue burns. The Defendant McDonald's knew that the coffee, at the time it was served, was too hot for human consumption

The written transcript is not going to reveal the attitudes of corporate indifference presented by demeanor or of the witnesses for the Defendant McDonald's as well as their employees, but the jury was exposed to it and I think that they properly considered it in their deliberations. And let me say that with knowing the risk of harm, the evidence and testimony would indicate that McDonald's consciously made no serious effort to warn its consumers by placing just the most simple, adequate warning on the lid of the cup in which the coffee was served...

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McDonald's Coffee Lawsuit...

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The McDonald's coffee case is not a frivolous case, as most uninformed people believe. In fact, Ms. Liebeck had a very strong case against a very unsympathetic corporate defendant. An argument can obviously be made that the punitive damages should not have been decreased, especially in light of the purpose of punitive damages.

Far too many have the misconception that if any insignificant, trivial misfortune happens to you, then you can manipulate the legal system until you finally strike gold. That simply is not the case. Our legal system has numerous checks and balances and control measures in place that deter and penalize frivolous lawsuits and curb excessive jury verdicts.

This is all evidence of culpable corporate mental state and I conclude that the award of punitive damages is and was appropriate to punish and deter the Defendant for their wanton conduct and to send a clear message to this Defendant that corrective measures are appropriate.

Judge Scott ordered the parties to engage in a post-verdict settlement conference which resulted in a settlement of the case for an undisclosed amount (less than \$600,000) which remains confidential. Ms. Liebeck's case was dismissed with prejudice on November 28, 1994.

McDonald's has taken some remedial measures in the aftermath of the Liebeck lawsuit. Many McDonald's drive-thrus now have a sign warning, "Coffee, tea and hot chocolate are VERY HOT!" Also, the lids of McDonald's hot beverage cups are now embossed with the words "HOT! HOT! HOT!" It is debatable whether the coffee at McDonald's is served any cooler than the coffee that injured Ms. Liebeck. Some sources indicate that McDonald's current policy is to serve coffee between 175-195 degrees Fahrenheit. The industry standard still calls for near boiling temperatures for the best-tasting coffee. Hence, the current reaction to coffee lawsuits is to do a better job of warning, but maintain the temperature for better tasting java.

So, what can we take from all this? First, the McDonald's coffee case is not a frivolous case, as most uninformed people believe. In fact, Ms. Liebeck had a very strong case against a very unsympathetic corporate defendant. An argument can obviously be made that the punitive damages should not have been decreased, especially in light of the purpose of punitive damages. Does anyone

really think that \$480,000 is going to sting and deter the McDonald's empire the way that \$2.7 million would? This is not about getting rich; it is about shocking back to life the conscience of a corporate giant that could not be bothered with people who are victimized by their negligence and callous indifference. The facts demonstrate that this case was far from frivolous.

Second, we as attorneys can and must do our part to help change the public perception of our legal system. Far too many have the misconception that if any insignificant, trivial misfortune happens to you, then you can manipulate the legal system until you finally strike gold. That simply is not the case. Our legal system has numerous checks and balances and control measures in place that deter and penalize frivolous lawsuits and curb excessive jury verdicts. Our legal system works; and those who degrade and twist our profession by spreading half-truths and distorting reality sadly align themselves with those who have exploited the ignorance-induced fear of others throughout history. It is truly amazing how the truth can change perspectives.

"But what if they won't listen to me?" Just like Moses at the burning bush, we may need a little extra ammunition for the mission ahead. Well, here it is. The next time someone is indulging in the latest pastime sport of "lawyer-bashing," challenge that person by saying, "I'll bet you probably think that the McDonald's coffee lawsuit was a frivolous lawsuit, don't you?" After they accept the challenge to your seemingly indefensible position, you can then begin to (politely) dismantle their perception of the poster child, cornerstone, and personification of frivolous lawsuits by informing them of "the rest of the story" behind Liebeck v. McDonald's

Restaurants. You will have begun a dialogue that will help change the misconceptions of our profession and our legal system. Each of us owes this duty to our profession in the face of the attacks that we have unfortunately grown all too accustomed to.

I am reminded of Alexander Hamilton, who wrote concerning the judiciary in the Federalist Papers of "the effects of those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community." The ill humors surrounding our profession will give place to better information and deliberate reflection; I hope that this article can serve as a starting point for that better information.

To conserve space, POA took out all of the footnotes and references. To read the entire article [CLICK HERE](#).

Kevin G. Cain is senior counsel with the law firm of Martin, Disiere, Jefferson & Wisdom, L.L.P. in the appellate section. cain@mdjwlaw.com



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-

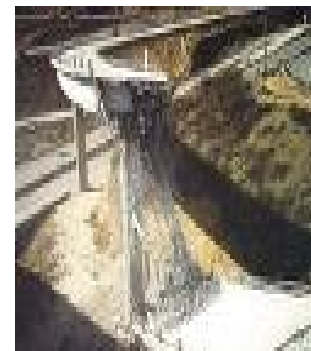
posal goes in the opposite direction."

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.