

# Hurricane Katrina: *Kodrin v. State Farm*

By John W. Redmann, Attorney for the Kodrins

At the end of 2007, the first-ever federal jury against State Farm Insurance Cos. concerning Hurricane Katrina took place in New Orleans in a landmark case noted around the world. In *Kodrin v. State Farm*, the jury found State Farm in violation of Louisiana's laws on bad faith, and awarded homeowner's policy limits of about \$250,000, plus \$50,000 in mental anguish, and another \$50,000 in bad faith penalties. About \$130,000 in attorney's fees and costs was subsequently awarded by the Court

This was only the second federal jury trial against **any** insurer (*Weiss v. Allstate*, which settled after a jury verdict), and the *Kodrin* case was appealed by State Farm to the US 5<sup>th</sup> Circuit. The ruling from that Court was pending at this writing.

There are a number of striking facets in the *Kodrin* case, not the least of which are: 1) how a "Good Neighbor" insurer could treat long-term customers so badly, and 2) how that insurer, and many other insurers, used the same model to avoid paying homeowner claims, perpetrated fraud at taxpayers' expense, and made historically high profits.

Few would dispute that Hurricane Katrina was the worst natural disaster ever to hit the nation when it struck in 2005. What the world watched on television was only a hint of what people on the ground in New Orleans actually experienced. Judy and Michael Kodrin, for example, found

themselves left with nothing but rubble where their home had been. Also destroyed was the local marina, where Mike was manager. This was the Kodrin's sole source of income since Judy retired from her school board job.

Despite this, the Kodrins took some comfort in assuming that the substantial homeowners insurance policy they had faithfully paid premiums on for many years would be there for them. They also had a flood policy, but it was worth less than a third of the homeowner's policy.

## What House?

Initially, a State Farm adjuster conceded that the destroyed home was a covered "wind claim," but no money came. Months passed until an engineer's evaluation could be completed. This 256-word "evaluation" was based on looking at cleared land where the home had stood, along with a cursory glance at some photographs. There was no effort to investigate or consider meteorological or flood data, and the evaluation ultimately blamed the loss exclusively on flooding because he "saw" no evidence of wind damage.

State Farm invoked this report to deny coverage throughout the litigation. They disregarded the 42-page report from the Kodrin's own engineer that made a clear case for wind destruction.

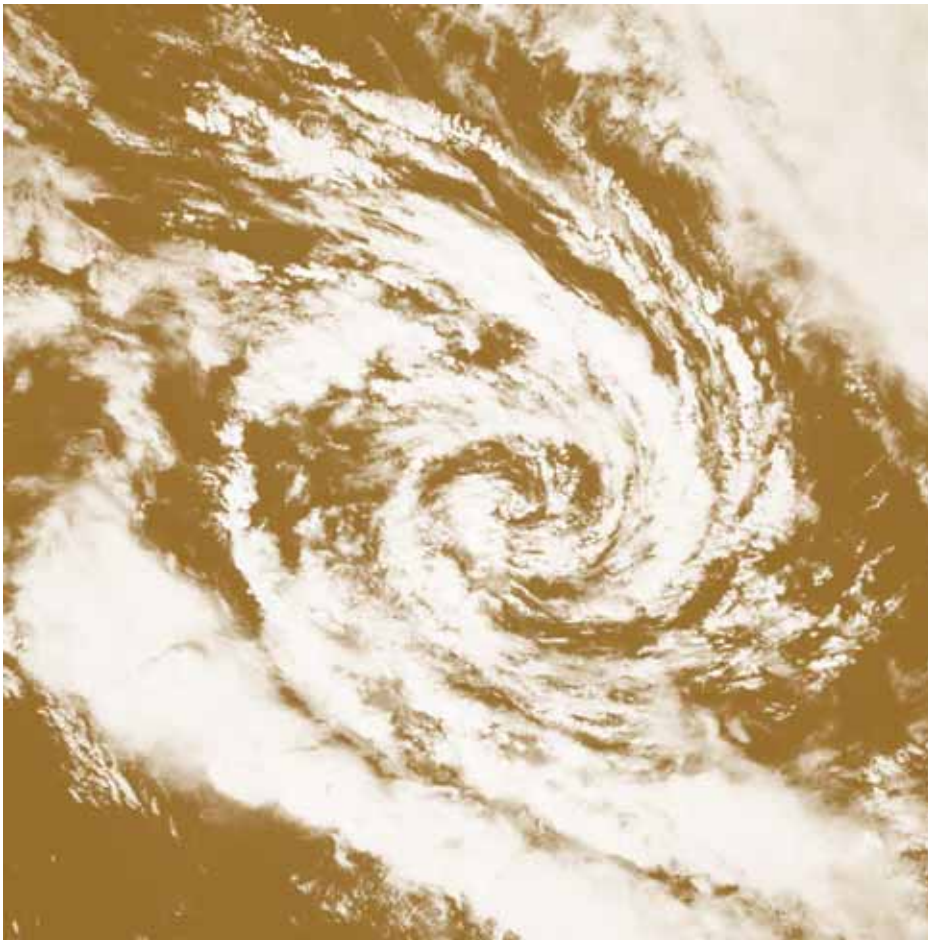
After losing everything to wind and flood, including a place to work, life

continued to dole out misery for the Kodrins. Judy's mother died not long after the hurricane, and then she discovered that her breast cancer had returned after being in remission for a number of years. In 2006 alone, the insurance co-payments for her chemotherapy and related care exceeded \$14,000. Mike had to come up with the money and get her to chemo sessions three times a week.

Louisiana law mandates that if an insurer acts in bad faith, the company is liable for general damages (including mental anguish). In this case, the Kodrins were having an almost unimaginably rough time. The \$250,000 that was clearly owed but wrongfully withheld for so long by the insurer for no credible reason would have made a huge difference in the Kodrin's lives.

However, State Farm, knowing the financial pressures the Kodrins were under, was trying to convince them to accept the paltry limits on the flood policy. What State Farm was not telling them was that if they accepted this money they could be jeopardizing their claim for homeowner's coverage.

The Kodrins insisted that any settlement also involve settlement of the homeowner's claim, which delayed the flood settlement. Ultimately, they were paid the flood money, before hiring legal counsel to help in their quest for fairness.



or by water (*i.e.*, flood), they should simply blame it on flood and deny coverage under the homeowners policy.

All this prevarication, downright bad faith, *de facto* fraud that came to light at trial in *Kodrin v. State Farm*, led to what can only be described as “obscene” profits for national insurance companies as a result of Katrina. Many homeowners policy claims were wrongly denied, and the holders of such policies often found their premiums dramatically increased—or, in some cases, they were cancelled altogether and became virtually uninsurable as a result.

The finding of bad faith that the Kodrin jury returned may have struck a righteous blow for homeowners everywhere. The facts of the case were so unambiguous that the odds are in favor of the 5th Circuit appellate court upholding the verdict. This would be a clear signal to the insurance companies that acting in bad faith with the insured will not be tolerated.

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His JD is from Loyola University Law School in New Orleans, where he is also a regular “Skills Course” instructor. He also has Bachelor’s degrees in French and Psychology.

### Two Checkbooks and a Smoking Gun

The United States decided some time ago to let national insurance companies, such as State Farm, administer (sell, renew, adjust, etc.) flood insurance for consumers that the government basically backs and pays for with tax dollars. This means that these companies can then sell both homeowners and flood policies on the same property.

When Katrina hit, hundreds of thousands of affected homes had both wind and flood problems to deal with. Counsel for the Kodrins argued to the jury that State Farm, faced with epic proportion payouts on claims, effectively gave their thousands of adjusters two checkbooks and reminded each adjuster that:

1. Where there has been both wind and flood damage, remember that one of those checkbooks is for flood policy payments—it costs us nothing because the money comes out of the US Treasury and we get a commission when you cut that check
2. The other checkbook is a State Farm checkbook, and if you must use it, remember that it affects the company’s bottom line, company bonuses, etc.
3. Now...do what’s “fair”

An internal document formerly buried in the bowels of the company made its public debut in *Kodrin v. State Farm*. It was the “Wind/Water Protocol” memorandum that was issued about September 20, 2005. This memo essentially suggested that if adjusters came across damage that they could not be sure was caused by wind

