

New Orleans attorney takes landmark Katrina insurance case to U.S. Supreme Court

Plaintiffs in landmark Katrina case ask U.S. Supreme Court to reinstate original jury's findings, penalties; plaintiffs say consumers, right to jury, in jeopardy

NEW ORLEANS - A Port Sulphur, La. couple whose home was reduced to rubble by Hurricane Katrina has asked the U.S. Supreme Court to overturn lower court ruling.

John W. Redmann, attorney for petitioners, contends the Federal 5th Circuit Court ignored state "bad faith" laws in its ruling, endangering the constitutional right to a jury trial.

"The Federal Appellate Court's refusal to accept the jury's conclusions and apply Louisiana Law diminishes the constitutional right to a jury and due process. Americans can't hold insurance companies accountable for violating bad faith laws if any excuse for not paying a claim will do, and that is not acceptable." Redmann said.

In a Petition for Writ of Certiorari filed in the United States Supreme Court on July 21, 2009 in the case of *Kodrin v. State Farm*, Louisiana natives Judy and Michael Kodrin allege State Farm went to extreme lengths "in bad faith" to avoid responsibility.

In November of 2007, a New Orleans federal jury agreed with the plaintiffs, awarding them 100 percent on the policy plus bad faith damages. Based on the jury's findings, the trial judge adopted those findings and also awarded attorney's fees as law allowed. The verdict was reported internationally as the first Hurricane Katrina trial against State Farm, and only the second Katrina insurance case ever tried. But in March of 2009, the federal appellate court vacated a portion of the *Kodrin* trial verdict, taking away all bad faith damages, penalties and attorney fees previously awarded. "That decision could have serious implications for many others," Redmann said.

"Considering substantial numbers of Katrina victims still awaiting trial, and all other current and future alleged 'bad faith' insurance victims that will come in the vast Gulf region encompassed in the domain of the U.S. 5th Circuit, it is indeed hoped the U.S. Supreme Court will recall its own pronouncement that, not only has it granted writs in state law application scenarios such as this, it 'undoubtedly should do so where the alternative is allowing blatant federal-court nullification of state law,'" he said, citing *Leavitt v. Jane L.* 518 US 137 (1996).

The petition asks the U.S. Supreme Court to reinstate the trial court's award of bad faith damages, penalties and attorney fees.

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At the time of Hurricane Katrina, the Kodrins had a flood policy with about \$76,000 in coverage for home and contents *total* and a homeowner's policy worth a total of about \$216,000 for home and contents, both policies obtained through State Farm.

"The Kodrins, like so many others across the Gulf Coast, had their Port Sulphur home reduced to rubble by Hurricane Katrina's devastating winds, which arrived hours before flood waters crept in on August 29, 2005," Redmann said.

"State Farm never paid anything on their homeowner's (wind) policy until long after trial, but early on tried to get the Kodrins to take the federally funded flood limits only. State Farm conveniently had 'two checkbooks' and could pay out of their own bank account if it decided winds/rain were the cause, or out of the U.S. Treasury, if it decided the blame was due to flood," he said.

At trial, jurors heard and saw evidence that State Farm violated Louisiana's insurance "bad faith" laws, Redmann said.

Prior to deliberation, the jurors were instructed as to the law, including as to "Bad Faith," and were provided the Jury Interrogatories to fill out regarding their verdict in the case. In response to *both* questions on the form relating to bad faith conduct, the jurors unanimously found that "State Farm arbitrarily, capriciously, or without probable cause failed to pay or offer in writing to settle" the homeowner claims consistent with the law. [Writ App., p. 40a].

"It is important to point out that if just *one* of the two jury interrogatories regarding bad faith conduct, No. 5 or No. 7., had been answered in the affirmative, instead of both, bad faith penalties would still be due. 'YES' to both meant the jurors were satisfied that *both* broad Louisiana laws regarding bad faith – R.S. 22:658 (in No. 5) and 22:1220 (in No. 7) – were violated, the jury found 'by a preponderance of the evidence,'" Redmann said.

"Under state law, any single *instance* of bad faith – among many alleged under any statute - proven would be adequate to award penalties. In this case the multiple instances proven and/or admitted had to do with misrepresentation of important facts and conflict of interest matters, foot-dragging on statutory adjusting deadlines and general bad faith in the sham of an 'analysis' by State Farm in an effort to avoid responsibility for wind-caused loss, " he added.

The Kodrin team argued that critical facts were misrepresented or left out by the Bloomington, Ill.-based insurance company, all as demonstrated to the jury.

"State Farm, as authorized by the U.S. Government to administer federal flood insurance – which it also sold to the Kodrins, had a major conflict of interest. State Farm alone, with

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virtually no government oversight, got to adjust this storm loss, decide who would pay – State Farm, or the US Treasury - and write the check(s), depending upon its conclusions of causation.

“Thus State Farm sent adjusters out to scenes such as the Kodrins’ with, effectively, ‘two checkbooks’ - and the option of writing checks out of either or both checkbooks. This put the adjuster in the position to save State Farm well over \$200,000 if he blamed the Kodrins’ damage on the flood waters that arrived hours after devastating winds hit,” Redmann said.

“State Farm failed to ever mention this flagrant and outrageous conflict of interest. Also, no one from State Farm ever mentioned the conflict of its getting a handsome commission from the U.S. Government on every flood policy payment it made in these situations,” he said.

“Now imagine that ‘sweet deal’ for insurance companies multiplied many 100’s of thousands of times, regarding claims on homes and businesses devastated by Katrina. *This* scandal makes the ‘Enron’ and ‘Erin Brockovich’ stories quite pale by comparison. Perhaps it also helps explain why State Farm and other insurance companies, following the worst natural catastrophe ever to hit the U.S., posted their greatest profits ever in 2005 and 2006.

“Also very disturbing, this ‘Good Neighbor’ insurer never told the Kodrins that if they accepted the flood money - which State Farm was trying to get them to accept from the very beginning - it might jeopardize their rights to make any claims on their homeowner’s insurance, even though both policies together would not pay for all that was lost,” Redmann said.

The suit also asserts that in violation of the law, State Farm took too long to begin adjusting, and too long to adjust, the claim. “In my opinion, these are typical delaying tactics, which hold up vital sums when needed most, putting claimants into desperate financial jams, often forcing cheap and unfair settlements, as seen aplenty post-Katrina.” Redmann said.

State Farm’s expert report eventually filed in the case attempted to put blame on flooding, not wind. The report was “absurdly bad,” Redmann said, citing a length of 252 words, unsupported by any attachments or any research, that “relied” on the adjuster’s report.

“How this decision is handled could have serious implications for anyone with any type of insurance who is hoping for fair-dealing if they have a claim,” Redmann said.

“While Federal 5th Circuit Court left in place the jury’s award of the homeowner policy limits, the court was plainly wrong when it took away the Bad Faith penalties awarded. The Appellate Court’s stated reasoning appears to cause total invalidation of state-wide laws which hold insurers to account for ‘bad faith’ conduct, and nullifies the constitutional right to let a jury decide regarding same bad conduct and penalties,” Redmann said.

Additional resources:

- Photo of John W. Redmann (JPG);
- Editorial on the case written by John W. Redmann (MS Word or WordPerfect);
- The original writ in its entirety (PDF),
- Petitioner's and State Farm's Expert's Reports, Relevant Exhibits, Photos via www.redmannlaw.com
- Interviews in person or via telephone Contact Ruth Caloian at 504-433-5550 or 1-800-240-1995 rcaloian@redmannlaw.com
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