

Insurance Company USAA Publicly Admits Shifting Costs To NFIP, Taxpayers

Press Release

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In oral arguments before the Mississippi Supreme Court on Tuesday, insurance company USAA admitted that it shifted its own costs to the federal government's National Flood Insurance Program (NFIP). In the first wind vs. water case to reach Mississippi's state's high court, the lower court asked the high court to interpret the "anti-concurrent causation" clause that is often buried inside homeowner contracts. The lower state court requested the high court interpret the burden of proof before the case is heard on the facts.

At issue is whether the insurance company bears the burden of proof to determine the extent of property damage caused by wind or whether the company can void a homeowner's wind coverage simply because water came on the property at some point. USAA asked the court not to require the company to pay any wind damage based on the fact that the property also incurred some water damage. The Gulf Coast suffered up to four hours of damage from hurricane force winds before any flooding began.

"Asking the court to sanctify the company's decision not to live up to its fiduciary responsibility to the federal taxpayers and homeowners is outrageous," responded Rep. Gene Taylor (D-Miss.). "I vigorously renew my call for the U.S. Senate to follow the lead of the U.S. House of Representatives and pass my Multiple Peril Insurance Act. This act eliminates all opportunities for insurance companies to continue to betray Coastal American homeowners and taxpayers."

NFIP is financed through homeowner policyholder premiums, which are subsidized with federal tax dollars. In the aftermath of Hurricane Katrina, the NFIP ran a \$17.5 billion deficit while the Property & Casualty Industry boasted \$108 billion in profits in 2005 and 2006. To date, Congress has yet to determine the extent to which the NFIP's billion dollar deficit may have come from fraudulent claims that the insurance companies deliberately submitted.

"What we learned from Katrina is that insurance companies have an inherent conflict of interest when it comes to adjusting flood claims on properties that also sustained wind damage. Over and over and over again what we learned after Katrina," Taylor continued "is that companies like State Farm and Nationwide put out memos directing staff to resolve this conflict of interest in the company's favor and to the detriment America's homeowners and taxpayers. USAA's court admission confirms this as well."

In its 2007 report on the National Flood Insurance Program, the Government Accountability Office wrote

"...[P]olicyholders do not know in advance of a hurricane the extent to which damages will be covered because the amount of insured losses depends on whether it is a multiperil event, how much of the damages are caused by wind and how much by flooding, and how policy language will be interpreted in accordance with relevant state laws. Other concerns can also materialize when the WYO insurer determines not only the damage caused by flooding that is covered by the flood policy, but also the damage caused by wind that is covered under its own property-casualty policy, creating an inherent conflict of interest that must be managed or mitigated."

"...FEMA cannot be certain of the quality of NFIP claims adjustments allocating damage to flooding in cases where damages may have been caused by a combination of wind and flooding because NFIP does not systematically collect and analyze both types of damage claims data together on a property-level basis.

"Without information on the wind damage claims adjustments prepared by WYO insurers at the time they submit flood claims on hurricane-damaged properties, FEMA lacks controls to independently assess whether or not the apportionments between flood and wind damage appear reasonable.

"Hence, for a given property, NFIP does not know how each peril contributed to the total property damages or how adjusters working for the WYO insurers made such determinations."

- United States Government Accountability Office

National Flood Insurance Program: Greater Transparency and Oversight of Wind and Flood Damage Determinations Are Needed
(GAO-08-28 December 2007)

As the USAA court case demonstrates, insurance companies resolved this conflict in their own favor-placing homeowners and American taxpayers behind the eight ball in the process. Nationwide boasted to this same court that it, too, deliberately voided homeowners' legitimate wind claims. In papers to this same court, Nationwide boasted it "believes the ACC [anti-concurrent causation] clause excludes coverage, regardless of wind damage, if tidal surge was sufficient to cause the loss."

The 110th Congress House passed H.R. 3121, the Flood Insurance Reform and Modernization Act, which incorporated Taylor's Multiple Peril Insurance Act. The House version of the flood reauthorization bill resolved these problems by (1) creating an option for property owners to buy a single policy from NFIP that would cover wind and flood damage without needing to divide the loss between the two perils-thereby eliminating the conflict of interest in the current arrangement, (2) adding a requirement to the NFIP contract stating that the insurer will not include language in its own policies that would void coverage of wind damage because some portion of the loss is also caused by flooding, and (3) adding Additional Living Expenses coverage as an option in NFIP.

Taylor has already reintroduced the Multiple Peril Insurance Act to protect America's homeowners from these egregious industry activities. In 2007, the Times-Picayune ran a series of articles detailing this industry-wide behavior.

Insurers bilked flood program, suit says: Adjusters say wind claims underpaid

Same house. Same repairs. Same insurer. Why different prices?

Judge prods feds in flood insurance case

Inflated flood claim turns up at trial: Allstate contents list is news to owners

Buried inside insurance companies' homeowner contracts is their "get-out-of-paying-legitimate-claims" clause-known in the industry as the anti-concurrent causation clause.

"This clause is in clear violation of their fiduciary responsibility under the National Flood Insurance Program regulations rules," Taylor stated.

"...the Administrator will enter into arrangements with such companies whereby the Federal Government will be a guarantor in which the primary relationship between the WYO [Write Your Own] Company and the Federal Government will be one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended."

"...WYO Companies will adjust claims in accordance with general Company standards, guided by NFIP Claims manuals. The Arrangement also provides that claim adjustments shall be binding upon the FIA. For example, the entire responsibility for providing a proper adjustment for both combined wind and water claims and flood-alone claims is the responsibility of the WYO Company." [Emphasis added.]

At a subcommittee hearing on June 12, 2007, Matt Jadacki, Deputy Inspector General for Disaster Assistance Oversight, Department Of Homeland Security, provided compelling written testimony.

Complicating Factors When Wind and Flood Occur Together

"[T]here are several complicating factors that contribute to the perception that WYOs might have attributed wind damage to flooding.

First, it may be difficult to distinguish between wind and flood damage when the two perils occur concurrently, and especially when there is nothing left of the property except a foundation (slab). ... [H]urricane force winds were present up to 4 hours prior to the storm surge. Experts told us that such a differential could contribute toward significant damage caused by wind.

Second, insurance policies are difficult to understand and often misunderstood. ... A typical homeowner's insurance policy is a contract with no negotiation and few people read or understand its contents. ...Homeowners' policies normally contain language, which explicitly excludes flood damage, regardless of how the damage was caused. This provision is referred to as an "anti-concurrent causation" clause... One of the key issues raised in this private litigation between insurers and policyholders is the flood versus wind dispute - whether the standard homeowner's policy with an anti-concurrent causation clause will cover damage that resulted from Hurricane Katrina.

A third factor adding to a perception that wind damage was improperly attributed to flood is that adjusters are either working for WYOs or for companies hired by WYOs, and many people believe this creates a conflict of interest. The WYO has no financial exposure for flood damage, so some adjusters might favor finding flood damages rather than wind damage to reduce the WYO's financial exposure.

Finally, FEMA's oversight of the WYOs is limited. Under FEMA regulations, the entire responsibility for providing a proper adjustment for both combined wind and water claims and flood-alone claims is the responsibility of the WYO company. FEMA's agreement with the WYOs provides that claim adjustments shall be binding upon FEMA. FEMA needs to increase its oversight role of the WYOs..."

Matt Jadacki, Deputy Inspector General for Disaster Assistance Oversight, Department Of Homeland Security

The Committee on Financial Services Subcommittee on Oversight
and Investigations and Committee on Homeland Security
Subcommittee on Management, Investigations, and Oversight,
U.S. House of Representatives, June 12, 2007

Taylor warned that if insurers get away with legitimizing their fraudulent behavior, three things will occur.

(a) rather than accurately dividing the loss between wind and flooding, private insurance companies will shift all wind/water losses to the federal government's NFIP up to the flood policy limits,

(b) taxpayers will continue to pay billions of dollars for FEMA trailers or other housing assistance for displaced homeowners because when insurance companies fraudulently deny wind damage claims they also deny the Additional Living Expenses coverage that automatically kicks in from those wind claims, and

(c) homeowners throughout Coastal America will not buy windstorm coverage with confidence that their hurricane losses will be fully covered.

"Permitting insurance companies to create this untenable environment will result in some homeowners not evacuating when their government says to leave because they will want document the cause of the damage to their homes." Taylor stated. "This will result in unnecessary deaths and injuries which are a predictable tragedy that Americans can avoid. All we need to do is take the lead from the House of Representatives and pass the Multiple Peril Insurance Act of 2009."

The Mississippi case concerns "an appeal filed by Margaret and Magruder Corban over damage that Hurricane Katrina caused to their Long Beach home in 2005. . . . The Corbans want the Mississippi court to force USAA to pay for all damage to their home because the couple contends wind destroyed their property before the storm surge arrived."