

THE ADVOCATE

(September, 2004)

INSIDE THIS ISSUE:

New Consumer-Friendly Insurance Products Hit Market. GREAT Prices on GREAT Coverage for POA Members.



Pigs have flown!!!!

There's now actually quality insurance that pays.

POA, along with various State Democratic Parties, have teamed up to sponsor quality insurance and health related products for our members. We are gaining access to these products through Marsh, the world's largest insurance broker.

Why did POA team up with the Democratic Parties? It's really quite simple. The Democrats have, historically, supported consumer issues while the Republicans seem to always support the insurance industry and dislike levying penalties on insurers for their wrong-doing. That may be a generalization but, sadly it is true.

Since POA is a consumer advocate and not an advocate for the industry, we find

ourselves on the same page as nearly all Democratic candidates, legislators and regulators. Frankly, our members are sick and tired of being abused with high rates, slashed coverage, lowballing, and wrongful denials of claims, not to mention CLUE reporting, especially reporting of non-covered claims.

Plus, by teaming up with another group that offers nearly 55 million potential policyholders, we are able to negotiate juicy deals on premium insurance products.

We're going to get out of the gate with some health insurance and related products. We will be sponsoring an affordable health care plan that potentially could save you thousands of dollars. Individual premiums range from \$93—\$157 per month while full families pay between \$193—\$343 per month. The price varies depending on the package of coverage desired. Business owners who want to provide benefits to employees while trimming costs can enjoy super deals with these health plans too.

For those interested in

thorough medical screenings for artery/stroke, aortic aneurysm, osteoporosis and peripheral arterial disease (all the things that are above and beyond normal screenings) we are introducing discounted medical screenings that could potentially save your life while saving you hundreds of dollars. (see page 4 for details)

POA will also be sponsoring, in the near future, long term care. That is insurance for folks who may one day need long term care and don't want to burden their children with the expense. The product is very well priced and we recommend it for those members who are 40+ or those who have family members who may need care.

And, last but not least, we are moving forward with superior homeowners and auto coverage as well. We are in the process of negotiating a deal for members that offers great coverage for the best price. Stay tuned for more on that soon.

FEMA WARNS FL HURRICANE VICTIMS ABOUT MOLD local6.com

ORLANDO, Fla. -- The Federal Emergency Management Agency is reporting a sharp increase in the number of mold cases in Central Florida in the last several days, according to Local 6 News.

The lack of power and recent thunderstorm flooding are preventing many properties from drying out, which is causing dangerous mold to grow indoors.

FEMA has issued a mold

alert and is asking people suffering from mold-related problems to call the Environmental Protection Agency mold hotline at (800) 438-4318.

Local 6 News featured one family in Seminole County whose home is filled with mold. Pam Mallard said she cannot find help to clean the mold and her elderly mother's life is in danger because of it.

"We have nobody to help us," Mallard said. "We just need a general contractor out here so we can get started on fixing our house before she (mother) has to evacuate from the mold."

Allstate Insurance said they can't send anyone out to the Mallard house until September, Local 6 News reported. And FEMA said its paperwork is in the mail.

Save Big Bucks on Insurance	1
FEMA warns of mold	1
Neuro-damage Linked to Mold	2
Double Whammy on Repair/Replacement	2
Opinion: Political Round-up	2-3
Claims Form That Gets Claims Paid!	3
How to Pick an Agent	4
A Special Health Alert	4
Status on Bad Faith	5
Chronic Illness in Water Damaged Buildings	6
Pediatric Update: Water Damaged Buildings	7
Water Damage Causes = Cancellation	8-9
Homeowners Come Up Short on Insurance	10-11
Lung Development and Pollution	11
The Case that Can Change YOUR Life	12
Double-Dipping Deductibles	13-16
When to Test Your Home	Back Cover

Indoor mold exposure associated with neurobehavioral and pulmonary impairment.

Kilburn KH. University of Southern California, Keck School of Medicine. MedicineScLaboratory, Alhambra, California

Recently, patients who have been exposed indoors to mixed molds, spores, and mycotoxins have reported asthma, airway irritation and bleeding, dizziness, and impaired memory and concentration, all of which suggest the presence of pulmonary and neurobehavioral problems.

The author evaluated whether such patients had measurable pulmonary and neurobehavioral impairments by comparing consecutive cases in a series vs. a referent group. Sixty-five consecutive outpatients exposed to mold in their respective homes in Arizona, California, and Texas were compared with 202 community subjects who had no known mold or chemical exposures. Balance, choice reaction time, color discrimination, blink reflex, visual fields, grip, hearing, problem-solving, verbal recall, perceptual motor speed, and memory were measured. Medical histories, mood states, and symptom frequencies were recorded with checklists, and spirometry

was used to measure various pulmonary volumes and flows. Neurobehavioral comparisons were made after individual measurements were adjusted for age, educational attainment, and sex. Significant differences between groups were assessed by analysis of variance; a p value of less than 0.05 was used for all statistical tests.

The mold-exposed group exhibited decreased function for balance, reaction time, blink-reflex latency, color discrimination, visual fields, and grip, compared with referents. The exposed group's scores were reduced for the following tests: digit-symbol substitution, peg placement, trail making, verbal recall, and picture completion. Twenty-one of 26 functions tested were abnormal. Airway obstructions were found, and vital capacities were reduced. Mood state scores and symptom frequencies were elevated.

The author concluded that indoor mold

exposures were associated with neurobehavioral and pulmonary impairments that likely resulted from the presence of mycotoxins, such as trichothecenes.

Publication Types:

- Clinical Trial
- Controlled Clinical Trial
- Randomized Controlled Trial

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Double Whammy on Lowball Pricing for Repairs and Replacement

Most insurers use a pricing program called Xactimate to arrive at their repair and/or replacement estimates. These estimates are used as the basis from which payments are issued to policyholders. For example, if Xactimate pegs plywood at \$5 per sheet, and 5 sheets of plywood are needed, then repairs are pegged at \$25.

Insurance companies have found new and creative (slimy) ways around the

already woefully low Xactimate pricing. In super secret memos obtained by POA, one "independent" adjusting company, per the instructions from clients like Travelers, reduced the estimates even further by lowballing the already lowballed Xactimate prices.

The memos were distributed by Travelers when the insurance giant was attempting to hire adjusters to handle hurricane claims in Florida. Travelers

distributed these memos in an attempt to "educate" adjusters about the new pricing policies. The instructions to the adjusters: Use these new prices not other Xactimate prices.

That's a double-whammy if there ever was one. And, who does this impact the most? Hurricane victims in Florida.

For more go to:

http://www.policyholdersofamerica.com/insurance_claims_adjusters_on_xactimate_pricing.pdf

POLITICAL ROUND-UP: The Republican Insurance Scam

By Hochizen

If an insurance company promises to cover a loss or claim, why do the Republicans want them to be able to break their promise? This is the heart of the debate on the rights of patients to sue their HMOs. Presently, virtually everyone knows that insurance companies will, as a matter of policy, deny claims or delay payments of claims which are valid. For the insurance company, it makes all the sense in the world. They get to keep the money, and earn interest on it, and write policies against the reserve. Maybe the claimant will die or just go away. The claims adjuster is pressured to not pay claims easily.

So the right to sue an insurance company is of paramount importance. Without the right to sue, you will literally be at the mercy of the insurance company to cover whatever it pleases. The idea of arbitration is of course to

make it less likely that an insurance company will have to pay money. The arbitrators will be hired by the insurance company....and even if they are instead hired by the state, they will be courted by the insurance companies much like the judges are nowadays. The insurance companies are HAPPY to pay massive sums for political campaigns... heck, if they give say \$1 million to a governor, and he pushes through tort "reform" (which actually just means insurance companies don't have to cover some claims they did before) then they make out like bandits. Hmmm... insurance companies... bandits... yeah, I can see the connection.

But I digress. If patients can sue the insurance companies, the insurance companies will lose some money because they will have to pay claims they would otherwise refuse to pay.

This is what the entire debate is about. The Democrats say that insurance companies should not be able to break their promises to those they insure. The Republicans say they should be able to break their promises. Let us examine the common Republican response to this fact:

1. *"Well, if insurance companies have to actually meet their obligations, they will have to raise rates and millions of children will be without health insurance"*

Continued on page 3.....

Political Round-up continued....

This is an opinion piece and does not necessarily reflect the opinion of POA. POA publishes many opinions that we find thought-provoking and give readers something to think about.

This is the most common argument. It is also utterly ridiculous. Insurance is valuable only to the extent that it can be relied upon to cover a claim or a loss. If you have a health insurance policy that refuses to pay for medical treatment, you are worse off than if you had no health insurance. See, you rely on the insurance in making many decisions (how much cash to keep on hand, whether or not to buy another policy that *would* cover the claim, and so on). If you lose health insurance that does not cover claims, you are better off because the insurance only provides an *illusion* of protection.

Also, if the premiums do in fact go up, then the "spreading of the risk," which is the philosophical basis for insurance, is merely meeting market demands. Those Republican rascals do so love a free market... except when it might make some of their donors lose money.

2. *"The trial lawyers will make tons of money and the Democrats are in their pocket."*

This argument is real fun! See, a lawyer never awards a single dime in damages. A lawyer cannot award anything! The jury awards money, and juries are made up of American citizens. The Republicans and the insurance companies fear the citizen jury, though, because in court, a multimillionaire is supposed to have the same rights as the poor person. The Republicans thrive on being the ruling class; they do not like the prospect of being subject to the same rules as everyone else. The insurance companies accept trials as a part of doing business, but just as they are not subject to antitrust provisions, they like to limit their liability wherever possible so as

to maximize their profit (and the salaries of their executives).

The multimillion dollar verdicts you read about are news *because* they are so rare! For every big verdict, there are literally thousands of smaller claims which will be thrown out or settled for a small sum. You do not hear about these claims because they are not news. Yes, some lawyers will make money off of cases brought to force insurance companies to meet their obligations. Guess what? The insurance companies will

A patient's bill of rights will cost our big campaign donating insurance companies and their executives lots of money, and they won't have as much to give to the Republicans' next campaign if that happens."

have their own lawyers too who will usually make much more money than the plaintiffs lawyers.

The jury system is a basic part of our system of government. Insurance companies and Republicans hate it, because they do not want the average citizen to have any power over their conduct. That is why it is necessary for the Republicans to demonize lawyers (many of

whom are Republican).

3. *"Well, if we have a patient's bill of rights, why not cap damages at \$500,000 to keep the juries from going hog wild?"*

Simple. In every case where the verdict is excessive, the insurance company has the right to seek a decrease in the verdict. The insurance company also has the right of appeal to a higher court in the event the verdict is not decreased. The caps then become relevant only in those most egregious cases where insurance companies have acted so horribly that a multimillion dollar verdict will be allowed to stand. Why should horrible conduct be protected?

Another point to ponder: say insurance company liability will be capped at \$500,000. Let's say you get into a severe accident and after surgeries, physical therapy, speech therapy, job retraining, and so on the bill will be in excess of \$1 million. Do you think your insurance company will pay \$1 million if its liability is capped at \$500,000? Especially when the \$500,000 would have to be paid say two years from now, after a lengthy court battle? Trust me, they would not pay a dime.

Finally, there is the REAL reason Republicans oppose a patient's bill of rights:

"A patient's bill of rights will cost our big campaign donating insurance companies and their executives lots of money, and they won't have as much to give to the Republicans' next campaign if that happens."

Well at least it is the truth. You won't ever hear a Republican admit it though!

Policyholder Claims Form Now Available

Adjusters have forms to fill out when a claim is filed so, as always, POA evens the score and levels the playing field by creating our own claims form which should be filled out by the policyholder. It's a simple, helpful form that enables you, the policyholder, to better organize your claim, track it, log in information and provide all such info back to the insurance company.

If and when the claim goes south, this form will be extremely

Do unto others as you would have them do unto you. All-rightly-then.

useful to you because it documents what the insurance company knew and when they knew it.

The "Policyholder Claim Form" is available on our website at:

http://www.policyholdersofamerica.org/claims_form.pdf

If you or a family member have a claim, be certain to print this form off the site. It will help.

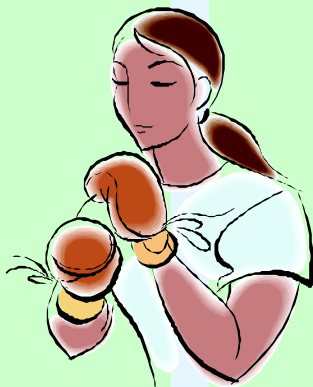
HOW TO PICK AN AGENT: Get someone who will go to the mat for you

So you are in the market for insurance and you comb through the phone book or consult with your neighbor who happens to be an agent.

Not so fast!

POA recommends independent agents, not "captive agents". Don't know the difference? Don't feel left out; few do.

A captive agent can only sell one "brand" of insurance like State Farm, Allstate or Farmers. Independent agents sell a variety of competing insurance products and are not beholden to any one company.



Why is that important? Because if a problem occurs and you are at odds with the insurance company, you want your agent to be your advocate. If his or her income stream is contingent on one company, he or she is far less likely to go toe-to-toe with the carrier for you or anyone else.

We see it daily. POA receives thousands of calls each year from agents — both captive and independent agents. The captive agents typically tell us that their company is not following the laws governing claims handling but cannot take on the insurance company for fear of reprisal. These agents must, after all, put food on their family's ta-

ble.

The independent agents, on the other hand, seem far less fearful of reprisals. If one carrier gets mad at them for advocating for the policyholder, the agent can take on a competing line.

POA has asked a number of captive agents associations to step up to the plate and serve as advocates. Thus far, they have refused and cite the potential loss of income as the reason.

Remember that when you're shopping for insurance. In the end, picking the "right" agent may be more important than picking the right insurance company.

HEALTH ALERT: Special Price for Medical Screenings

Most HMOS and health plans don't cover medical screenings for stroke and other critical illnesses because it costs them too much money. The cost is usually the responsibility of the policyholder, so many are left unaware of their illnesses and don't seek treatment.

What you don't know **CAN** hurt you! POA wants you to know if you have health problems **BEFORE** it's too late!

At a special price available to POA members and their families, you can be screened for potentially life threatening diseases like:

- **Stroke**
- **Peripheral Arterial Disease**
- **Abdominal Aortic Aneurysm**
- **Osteoporosis**

Stroke is America's third leading killer and the number one cause of nursing home admissions. Unfortunately, half of all stroke victims have no warning signs before a stroke occurs.

Fortunately, Life Line Screening, the nation's largest provider of mobile vascular screening services can help you prevent a stroke in ten minutes. I did it and even had my parents screened. It saved a life. All 4 ultrasound tests are quick, painless and non-invasive!

Half of all stroke victims have no warning signs before a stroke occurs.

Cost? These screenings can cost more than \$1,000 in a hospital. **YOU CAN GET ALL FOUR SCREENINGS DONE FOR \$125; get the three vascular screenings for just \$99.** Have your credit card ready and call this number to set up the appointment with Life Line Screening: 1-800-697-9701.

Please take advantage of the discounts POA has negotiated for you and your loved ones!

Melinda Ballard
Policyholders of America

P.S. Just a heads up for those over 50! These screenings are most beneficial for you. Also, feel free to pass this information on to your friends and family so they too can take advantage of your involvement in POA.

Bad Faith in First Party Property Claims By: Everette Lee Herndon, Jr.

The insurance industry has recognized the concept of "Bad Faith" for many years and has acknowledged that an insurance policy carries with it a covenant of good faith and fair dealing.

The Fire, Casualty & Surety Bulletins, an insurance industry publication recognized nationwide by insurance companies, says that:

At heart, bad faith is the intentional failure by an insurer to perform the duty of good faith and fair dealing implied at law. Generally, an insurer may be acting in bad faith when it refuses to pay a claim and (1) has no reasonable basis for refusing to pay and has actual knowledge of that fact, or (2) has intentionally failed to determine whether it had a reasonable basis for so refusing.

The courts in various states have recognized the concept of a covenant of good faith and fair dealing between the insurance company and the insured. A breach of this implied covenant or duty is a violation of the insurance policy itself and of good claims handling practices. This breach may (or may not) be recognized by a state as a cause of action entitling the insured to sue the insurance company for Bad Faith.

Bad Faith is more than ordinary negligence or breach of contract.

Mike Johnston, a trial lawyer from Oklahoma, has developed a list of his "Top 40" types of acts of Bad Faith by insurance companies. Recognition of these acts or types of acts as Bad Faith will depend on your local state court. Mr. Johnston's list can be found at: <http://www.quatloos.com/traps/badfaith.htm>

The actual implementation of the concept of Bad Faith varies from state to state. Some states recognize Bad Faith as either a tort or contract cause of action (or both); others states do not -

i.e. you can sue an insurance company for Bad Faith in some states but not in others. However, each lawsuit that goes to trial could change the state's view on Bad Faith.

At heart, bad faith is the intentional failure by an insurer to perform the duty of good faith and fair dealing implied at law. Generally, an insurer may be acting in bad faith when it refuses to pay a claim and (1) has no reasonable basis for refusing to pay and has actual knowledge of that fact, or (2) has intentionally failed to determine whether it had a reasonable basis for so refusing.

For a quick summary of where your state may stand on Bad Faith as a cause of action, either tort or contract, check out the Zurich Reinsurance (now Converium) web-site at <http://www.zreclaim.com/badfaith/newchart.asp> for a chart covering the 50 states. For definite information on your state, consult a local attorney as laws change frequently.

One of the earlier cases allowing a Bad Faith claim against an insurer was the California case of *Gruenberg v. Aetna Ins. Co.*, 510 P.2d 1032 (1973). In *Gruenberg*, the court allowed the insured to pursue a first party Bad Faith action when the insurer failed to deal fairly and in good faith by refusing, without proper cause, to compensate its insured for a covered loss.

An Arizona court, in the case of *Hawkins v. Allstate Ins. Co.*, 733 P.2d 1073 (1987), stated that first party Bad Faith actions are allowed if insurer intentionally denied a claim without a reasonable basis.



Find out where your state stands on bad faith:
<http://www.zreclaim.com/badfaith/newchart.asp>

In Texas, the case of *Universal Life Ins. Co v Giles*, A.W. 2nd 48 (1997) refined the Texas standard to say that an insurer acts in Bad Faith when it denies or delays payment of a claim after it should have become reasonably clear that the claim was covered.

Recovery of damages for Bad Faith lawsuits also varies from state to state. Some states allow punitive damages (above and beyond the policy limits), while other states restrict damages to actual policy coverage or contract damages.

Check with your local attorney to determine what causes of action (if any) are allowed in your state and what types of damages are recoverable.

Everette Lee Herndon, Jr. is a bad faith expert and authors articles in legal and claims publications. His website is: <http://www.leeherdon.com/>

THE ADVOCATE

Abstract: Changes in VEGF, MMP9 and leptin correlate with acute and chronic illness symptoms and visual contrast sensitivity in patients from water damaged buildings: Indicators of complex physiologic disturbances in Sick Building Syndrome Authors: Ritchie C. Shoemaker¹, Dennis House¹ ¹Center for Research on Biotxin Associated Illnesses, Pocomoke, Md

BACKGROUND:

A 5-step repetitive exposure protocol provides a mechanism to document causation of illness in symptomatic patients exposed to indoor environments of water-damaged buildings (WDB). By demonstrating benefits of treatment with cholestyramine (CSM) of affected patients, with stability off medication away from exposure and then documenting changes in symptoms and biomarkers prospectively with re-exposure, followed by correction with re-treatment, we have previously shown that the physiologic disturbances underlying illness in Sick Building Syndrome are identical to those of a chronic biotoxin associated illness. We present data here to support use of leptin, vascular endothelial growth factor (VEGF) and matrix metalloproteinase-9 (MMP9) as biochemical markers for both acute and chronic illness adjunctive to recording of symptoms and visual contrast sensitivity (VCS). We again present data on unique genotypes of HLA DR, analyzed by PCR, previously reported to be associated with a genetic basis of susceptibility to neurotoxic illness caused by exposure to resident indoor toxigenic fungi. The unique grouping of symptoms found in these patients, including fatigue, neurologic, respiratory and rheumatologic symptoms match changes of biomarkers with treatment and re-exposure.

METHODS:

26 consecutive patients exposed to buildings with growth of identified toxigenic fungi attending a private clinic for diagnosis and treatment of chronic fatiguing illness refractory to all prior modalities of therapy agreed to participate in an IRB approved, multiple intervention, longitudinal clinical treatment trial using CSM to assess the effect of exposure, treatment, re-exposure and re-treatment on multiple simultaneously measured clinical and laboratory parameters. Each patient provided in-

formed consent. Exposure to tobacco smoke, IgE, pulmonary function testing results before and after interventions and HLA DR genotypes were recorded.

“Changes in biomarkers suggest pathophysiologic abnormalities acquired following exposure to water damaged buildings.”

RESULTS:

Each affected patient showed clinical improvement following treatment with CSM and was stable off drug, away from exposure to the known affected building. Each patient relapsed within 3 days of re-exposure to the contaminated building off CSM, with improvement following re-treatment. Change in clinical course was paralleled by symptoms, VCS, leptin, MMP9 and VEGF. Improvement in PFT testing was noted. HLA DR genotypes previously noted to confer susceptibility were again demonstrated. Tobacco smoke was not a relevant clinical parameter. Symptom rosters showed multiple organ system illness, with fatigue, chronic pain and cognitive problems most commonly identified.

DISCUSSION:

Use of symptoms, VCS, leptin, VEGF and MMP9 gives the treating physician biomarkers useful in case identification and assessment of efficacy of therapy. Changes in biomarkers suggest pathophysiologic abnormalities acquired following exposure to water damaged buildings. These biomarkers change hyperacutely in each step, with clinical stability in chronic conditions. The direct physiologic effects of toxic elements from indoor buildings can be assessed clinically and used in prospective studies that can assign causation. A double blinded, placebo controlled clinical trial designed to further define these results is underway.

“Each affected patient showed clinical improvement following treatment with CSM and was stable off drug, away from exposure to the known affected building.”

Abstract: **Identifying markers for chronic illness in pediatric patients exposed to water damaged buildings: Linkage disequilibrium of HLA DR, MSH, MMP9 and autoantibodies**

Authors: Ritchie C. Shoemaker¹, Courtney Holt¹, Dennis House¹, HK

Hudnell² ¹Center for Research on Biotoin Associated Illnesses, Pocomoke, Md; ²US EPA NHEERL, Research Triangle Park, NC

Background:

No studies have previously identified biomarkers adequate to create a case definition of illness associated with exposure to water damaged buildings (WDB) in pediatric patients. Previous work from this facility has presented a case definition of illness in adults that includes exposure, symptoms and absence of con-

Specific genetic, physiologic and neurotoxicologic factors can be identified in pediatric patients that identify cases of chronic illness due to exposure to water damaged buildings.

founders, together with biomarkers HLA DR genotypes of the immune response genes; deficiency of the hypothalamic immunomodulatory hormone, alpha melanocyte stimulating hormone (MSH); excess pro-inflammatory cytokine responses, represented by matrix metalloproteinase-9 (MMP9), deficits in visual contrast and pituitary hormone dysregulation.

We have seen an increased incidence of antibodies to gliadin, cardiolipin and myelin basic protein in adults with chronic illness following exposure to WDB. Here we present data supporting a pediatric case definition using multiple biomarkers from 66 patients with illness following exposure to WDB.

Methods:

Patients under age 19 coming for treatment of chronic illness at a specialized medical clinic provided informed consent for evaluation and blood testing prior to initiation of definitive therapy for presumptive chronic, biotoxin associated illness. Symptoms were recorded and blood was sent to national high complexity labs for analysis of HLA DR genotype, MSH, MMP9, anticardiolipins (ACLA), antigliadins (AGA) and myelin basic protein (MBP) antibodies. Lab parameters were compared to in-house registries of control patients and published registries. Following treatment and confirmation of diagnosis, cases were then analyzed by biomarker to identify unique diagnostic features.

Results:

Control populations have markedly different HLA DR genotype distributions from cases, with relative risks for illness identified for the same genotypes as reported previously in adults. Affected patients had lower levels of MSH and MMP9 than controls. Marked increase in incidence of antibodies to antigliadin IgG, anticardiolipin IgM and myelin basic protein antibodies was found in affected patients compared to controls. Taken together, the combination of potential for exposure, absence of confounding diagnoses, presence of distinctive groupings of symptoms, including fatigue and cognitive problems identified over 85% of cases. Adding HLA DR, MSH deficiency, AGA-IgG and ACLA-IgM increased the case detection rate to 100%. For patients with MMP9 over 400, HLA DR and MSH deficiency alone identified all cases.

Conclusion: Specific genetic, physiologic and neurotoxicologic factors can be identified in pediatric patients that identify cases of chronic illness due to exposure to WDB. Physiologic mechanisms associated with increased production of particular autoantibodies will require further study.

Water-damage claims cause a flood of canceled coverage By: Carol Lloyd, Inman

News

"Come see what an uninsurable property looks like," Mark Christiansen laughed. The 37-year-old graphic artist and his wife, Amy Lodato, were in a mad scramble to get insurance for their 1940 Russo-style duplex in San Francisco's Lone Mountain neighborhood.

Uninsurable? Images run rampant through my mind: A mildewed shack, teeming with rats, perched atop a cliff. A burned-out hovel inhabited by squatters on the edge of a brush-fire zone. A straw-bale house in a flood zone.

What I don't imagine is the property I saw upon arriving at Christiansen and Lodato's home one blustery afternoon: well-maintained old construction and finely crafted remodeled details, gleaming hardwood floors, new paint and a pristine backyard. As carefully groomed as a Pacific Heights poodle, this house embodied that old real estate bromide "pride in ownership."

It may seem strange, but this is exactly what uninsurable property looks like in 2004, when homeowner's insurance in California is fast becoming a nightmare of Kafka-esque proportions. Since the rise of exorbitant mold claims, Sept. 11's blow to the insurance industry, the recent erosion of the stock market, and the fact that homeowner's insurance has been a relatively unprofitable business for some time, insurance companies are busy tightening their belts – generally around the throats of unsuspecting consumers.

Like so many stories of first-time homeowners in San Francisco, Christiansen and Lodato's started with a feeling of good fortune. They bought the building in 1999, when anyone who could still afford to live in San Francisco at all felt lucky. Their plan was to buy the duplex, condo-ize it and sell the upper unit to help subsidize their occupancy of the lower one, a two-bedroom, one-bath apartment on a busy street. Eager to protect themselves from any unpredictable catastrophes, the couple bought a complete insurance package from USAA Casualty Insurance Co. with water-damage and liability insurance, as well as basic fire coverage.

Two and a half years later, on the verge of condo-izing, they hired a roofing company to resurface the deck on the

upper unit, which seemed to have leaked water into the bedroom of their daughter, Chloe, below. But when water was sheeting down the walls again after a storm, the couple filed a claim with their insurance company and called the roofing company to return to redo the work, which carried a five-year warranty.

Soon after, their upstairs tenant fell asleep with the shower running, flooding the bathroom and saturating some of the walls downstairs. The next day, a claims adjuster came to check on the work that was already being done on the initial leak and ended up writing up a second claim for the new damage. He also asked Christiansen and Lodato to have part of a wall removed to see how extensive the damage was; the owners found little dots of mildew on the wood.

Had Christiansen and Lodato known anything about the current workings of homeowner's insurance, they would have known that their house was already marked by bad insurance karma. Because leaks can lead to mold and mold can lead to multimillion-dollar claims and lawsuits, some insurance companies now simply drop any clients who make a water claim of any kind. But making two water claims within a month and finding mold – well, this policy was fast becoming an insurer's black hole.

"At first, they'd told us it would be about an \$1,800 job to sand down the wet beams and put in new drywall," said Christiansen. "But it seemed like a switch flipped when they saw the mold."

At that time, the couple were still hoping to recover their \$1,000 deductible from one or both of the guilty parties (their tenant and the roofing company), so they were disappointed to learn from the adjuster that, as landlords, they were responsible for keeping the drains clear enough that a bathtub or shower could run in perpetuity. At that time, however, the adjuster still gave the couple reason to believe they had a case against the roofers.

The insurance company aggressively went about remediating the small patch of mold Christiansen and Lodato had discovered. Learning that the construction would continue for at least six to eight weeks to accommodate the re-

quired three mold inspections, the couple found a furnished apartment for \$4,000, to be paid for by the insurance company.

Again, Christiansen and Lodato didn't fully understand how this kind of expenditure might damage their ability to get insurance in the future. But, looking back, Christiansen now realizes the insurance company must have been racking up the bills. The construction company had turned the apartment into a hazmat site, sealing the back of the house in plastic, creating a "clean room" for workers to change in and out of "contaminated" clothes, running negative air machines 24 hours a day. In retrospect, the couple seem to think many of the precautions were overkill, to protect the insurer's liability. "It was insane," Lodato said. "They were all wearing hazmat suits and using [high-efficiency particulate-air vacuum cleaners] to clean all of our belongings that didn't have to be discarded. We had to throw everything away that was soft – Chloe's toys, mattresses, everything."

While their daughter's room was being "fixed," heavy rains led to more leaks and the contractor discovered that water was coming in through nail holes behind the metal siding; the adjuster wrote this up as a third claim. Still worrying about an additional \$1,000 deductible, Christiansen and Lodato argued that it was really the same claim, which had been mishandled.

"Up until then, [the adjuster] had been very friendly – and, suddenly, he exploded, 'How would you like to lose your insurance?'" said Christiansen. "Basically, he threatened us with exactly what happened to us."

Nine months later, after putting the upper unit on the market, the couple accepted an offer from a buyer, but she soon discovered she couldn't get insurance to satisfy her loan. When Christiansen called the couple's USAA agent, he was told he and his wife were being blacklisted and that their claims history was so egregious that no

continued on page 9....

WATER DAMAGE CLAIMS continued.....

"regular" insurance company would work with them or their building. When Christiansen asked why no one had ever told him and his wife they were jeopardizing coverage by making too many claims, another USAA employee told him it's considered a "conflict of interest" to caution clients about their claims.

"It was like trying to get health insurance if you have a really serious illness," said Christiansen. "No one would consider us."

The couple applied to the California Fair Access to Insurance Requirements (FAIR) program, a federally funded, industry-financed plan originally created for certain homes deemed uninsurable after the Watts riots. They also tried to get a temporary policy with a "high risk" company called Admiral, which would cost \$3,000 for a single month of basic fire insurance. When neither policy came through in time, they ended up releasing their buyer from escrow.

Eventually they finally got basic fire insurance from FAIR. (Other homeowners in similar predicaments have bought liability insurance from Lloyds of London, a company that typically insures high-risk properties such as oil tankers.) In retrospect, Christiansen says had he known then what he knows now, he would never have made a claim in the first place. "We could have dealt with it on our own," he said. "We just assumed that that was why we were paying for insurance."

"It's frustrating," added Lodato. "You have to buy it, but you're not supposed to use it."

Does their experience seem like an anomaly? Not if the reaction of Nanci Kramer, a spokeswoman for the California Department of Insurance, gives any indication. When I begin to tell her about this couple who have been deemed uninsurable, she finishes my sentence: "Don't tell me – they had water coverage and dared to use it. The nerve, huh?"

Kramer has been ringing the alarm bell about trends in homeowner's insurance for some time, adding that the industry is now "trending toward a crisis." The state Department of Insurance has been receiving complaints from outraged consumers, as well as reports from real estate agents about homes falling out of escrow. In the past year, according to Kramer, applications for the FAIR plan have soared from an average of 100 a week to 300 a day.

"Water claims are the scarlet letter of insurance," she said. But though water claims are the most common route by which people turn themselves into modern-day Hester Prynnes of homeowner's insurance, the practice of black-listing homes and homeowners can happen in many ways.

In part, it's because of the growing use of a database called CLUE (Claims Loss Underwriting Exchange), originally used as an antifraud tool to help insurance companies spot people who file identical claims with multiple companies. Now, however, it's commonly used to gauge potential risk. Owned by ChoicePoint, a publicly traded credit-history-reporting company, CLUE compiles information about the insurance history of buildings and their owners. CLUE has

effectively mechanized the insuring process, leading some homeowners to lose their insurance over trifling or even nonexistent claims.

Kramer recalls one first-time homeowner who was turned down by 45 insurance companies before calling the Department of Insurance for help.

"We asked him if he'd gotten a copy of his CLUE report, and he'd never heard of it," Kramer said. "How are you supposed to inquire about something that you don't know exists?"

When the man got his report, he discovered he had a record as having made a water claim because there had been a claim on the building where he'd previously lived as a renter.

Similarly absurd mistakes have occurred when people have simply called their agent to inquire about a claim and the agent records the inquiry as a claim in the CLUE database. This practice came under fire at hearings spearheaded by state Sen. Jackie Speier, (D-Hillsborough), who chairs the California state Senate's Committee on Insurance. During the hearing, representatives of the insurance industry claimed – much to the frustration of industry watchdogs – that California law requires them to record any inquiry as if it is a claim.

"Many carriers are changing the standard that they apply to the customer, and it's catching people unaware," said Brian Perkins, the committee's staff director. "The most outraged people we see are people who have been paying their premiums for 10, 15 years, and they suddenly find themselves unwanted."

To illustrate the problem, Perkins told me about a man who lost his insurance after simply inquiring whether the loss of a wedding ring would be covered under the clause about "mysterious disappearances" on his personal-property coverage. "He never filed a claim and never thought about it again, until he heard that he'd been dropped."

Perkins said the insurance industry's trend toward "cherry picking" only low-risk clients has come about from a number of causes.

"The cost of reinsurance for homeowners is higher, and so companies are passing along costs to consumers," he said. "Construction costs are also higher. Some companies lost a lot of money in last few years in the stock market. Some companies were using [their profits in] the stock market to cross-subsidize homeowner's insurance, which in general hasn't been a very profitable business."

No one is disputing the fact that business has been lousy for homeowner's insurance. In Texas, where there was a \$32 million mold-related lawsuit, Farmers, State Farm and Allstate, three of the state's biggest insurers, have stopped writing new policies. State Farm has now widened its moratorium to include California as well.

In 2002, *The Wall Street Journal* reported that the insurance industry had losses of \$9 billion on homeowner's insurance in 2001, and, according to the Foundation for Taxpayer and Consumer Rights in Santa Monica, Calif., the state's top 10 property-insurance and casualty-insurance companies collectively lost a quarter of a billion dollars in what turned out to be the

epitome of high-risk roulette: investing in WorldCom, Enron, Adelphia, Global Crossing and Tyco.

Industry representatives tend to downplay the stock market "crime wave" losses, pointing to the pernicious growth of mold claims instead. Perkins, however, said that so far, his office hasn't been able to isolate mold as a primary cause. "Despite what the insurance companies say, we still don't have any evidence that mold is a significant loss factor in California," he said.

Whatever the causes, the facts for ordinary homeowners remain formidable. Last month, Speier's office introduced a "homeowner's bill of rights," a Senate bill that would penalize insurers for recording inquiries as claims and force them to offer all homeowner's insurance except in extreme circumstances. Also, the California Department of Insurance's Web site offers simple advice in shopping for a new policy: Shop around, and get your CLUE report.

In the meantime, for those with insurance, we are left contemplating the mysteries of this absurd industry. Since we don't know what making a claim might mean for our coverage, and because inquiring about the coverage may end up being as damaging as actually filing a claim, it's tempting to imagine getting a friend to call your insurance company and ask a lot of hypothetical questions.

Unfortunately, insurance companies have armed themselves against this bit of trickery. Because of a fact that makes the workings of Kafka's castle seem rational and transparent, there's no way to do hypothetical research about an insurance company's underwriting policies.

"The rules are secret for underwriting guidelines," explained Brian Perkins of the state Senate's Committee on Insurance. "They're considered a trade secret. If an agent tells you anything about his company's policies that don't pertain to your own policy, he's breaking the law."

Christensen and Lodato may have been naive about the damage wrought by fully using their coverage but in the end, they would have

Get a CLUE! Find out what your insurance company is secretly reporting about you and your property. They may have devalued your biggest asset without your knowledge.

See if you or your property has been deemed "uninsurable" by calling the very people who record the data for your insurance company, ChoicePoint. Their number is: 866-527-2600. Your report will cost you about \$13.

bumped up against this idiotic paradox anyway. So, how do you know when to use your insurance and when to stay quiet and pay up?

"There's no one in the world that can answer that question," answered Perkins in a low voice.

Homeowners Come Up Short on Insurance

By JOSEPH B. TREASTER, NY Times

L CAJON, Calif. - Karla and Bruce Carroll remember the sheriff on his bullhorn ordering residents to evacuate and, minutes later, hearing the roar of monstrous flames arcing toward their modest home here in the hills above San Diego.

Mrs. Carroll grabbed a family photo album as they ran to safety; Mr. Carroll started to gather his fishing rods. But she hustled him along. "Don't worry about those things," she recalls saying at the time. "We've got insurance."

But, the Carrolls say, the insurance they bought from State Farm, the nation's largest property insurer, has left them at least \$100,000 short of the cost of rebuilding their home. Today, nearly a year later, they are still wrangling with their insurer and living in a 29-foot-long house trailer on the land where their three-bedroom home once stood, overlooking a spectacular sweep of ridges and canyons.

Their woeful shortfall in insurance coverage, experts say, is a plight shared unknowingly by millions of American homeowners. It has been fed largely by a shift in the way property insurance has been sold in recent years.

In a move to cut costs from claims, insurance companies began in the late 1990's to phase out coverage that guaranteed the replacement of a destroyed home, regardless of the expense to the insurer. In place of that unlimited coverage, which had become nearly universal, insurers substituted a similar-sounding policy with a crucial difference: it pays only the amount stated on the policy plus, typically, an additional 20 percent to 25 percent.

For their part, insurers insist that it is the consumer's responsibility to acquire adequate coverage.

The old policy was called a guaranteed replacement policy. The new one, which most Americans now have, is called an extended replacement policy.

"People look at this and it says 'replacement' and they think, 'That's good, I get my house replaced,'" said John Garamendi, the insurance commissioner in California. "But they don't get

their house replaced. They get money up to the set limits plus the extended 20 percent or 25 percent."

Marshall & Swift/Boeckh, a Los Angeles company that most insurers rely on for help in calculating the value of houses, estimates that 64 percent of American homes are underinsured by an average of 27 percent, with some homes underinsured by 60 percent or more.

Another insurance industry company, AIR Worldwide in Boston, estimates that many upper-income homes in New England are underinsured by 30 percent to 40 percent.

"The underinsurance problem lies just beneath the surface all across the country," said Robert P. Hartwig, the chief economist for the Insurance Information Institute, a trade group in New York.

The insurance gap has been worsened by the nationwide housing boom that has been rapidly driving up the cost of lumber, bricks, cement and other construction materials, industry executives say. And in Southern California, rebuilding costs soared even higher as the demand for contractors and building supplies suddenly jumped after the Carrolls' home and several thousand others were destroyed in wildfires over a few days last October.

But such explanations do not satisfy the industry's critics, who say insurers have shifted the burden of such mistakes onto homeowners.

"Most people go to their insurance agent to buy coverage and figure they're fully covered," said J. Robert Hunter, the director for insurance at the Consumer Federation of America. "But often they're not."

The issue of underinsurance has not attracted much attention because, of the millions of insurance claims every year, fewer than 2 percent are for the total loss of a house. But the wildfires here last fall came as a jolt. They quickly incinerated more than 3,700 homes and, Mr. Garamendi said, "a very large proportion" of

them were underinsured.

Consumer advocates and industry executives expect similar problems for the victims of Hurricane Charley in Florida as they begin working through their claims.

"The problem is everywhere," Mr. Hartwig said. "The disasters simply expose it."

George Kehrer, a lawyer and building contractor who founded Community Assisting Recovery in Los Angeles more than a decade ago to help people with insurance claims after disasters, said he had spoken to 1,200 people who lost homes in the California fires.

"About a dozen of them," he said, "were adequately insured."

No single factor is entirely to blame for the underinsurance, consumer advocates and industry executives say. Homeowners, they say, need to recognize their own responsibility.

But under pressure to make sales, Mr. Garamendi and consumer advocates explain, insurance companies and their agents often aim low in valuing houses. The goal, they say, is to keep premiums down to keep customers from going to competitors, and sometimes even a few dollars can make a difference.

"If they quote a realistic replacement cost, the price of the policy goes up," Mr. Garamendi said, "so they are motivated to keep the replacement cost down."

Insurance industry executives argue that it would make no sense to undervalue homes intentionally. The higher the insurance coverage, the higher the premium, they point out.

But Mr. Garamendi disagrees. "You want the sale first," he said. "O.K., you can get a little more premium if you give full coverage. But you lose the sale."

Mr. Hunter, the consumer advocate, said agents often lacked the training to assess accurately the value of a home, usually done these days with the help of a computer program. Rarely do the agents leave their offices to assess a house personally, agents and industry executives said.

"If they quote a realistic replacement cost, the price of the policy goes up, so they are motivated to keep the replacement cost down."

continued on page 11.....

THE ADVOCATE

HOMEOWNERS COME UP SHORT continued...

Mr. Garamendi said some agents inadvertently undervalued homes by using a computer shortcut to obtain what is known as a "quick quote." Then, when a customer decides to buy coverage, the agent fails to add details like designer cabinets and fixtures that tend to increase the replacement estimate and the cost of the insurance.

While most insurance policies include a built-in escalator to keep pace with general inflation, the costs of building supplies and paying for construction crews have been rising at a faster pace, in many cases widening the gap between the amount a house is insured for and what it will cost to rebuild it.

Another factor in the insurance gap has been a failure by some homeowners to increase coverage after the spurt in home improvements, from new kitchens to extra bedrooms, as millions of Americans have used cheap money from mortgage refinancings in recent years to upgrade their homes.

Still, in dozens of interviews over several days this month, owners of the homes in Southern California that were destroyed said repeatedly that they had been led to believe they had bought enough coverage to rebuild their homes and were stunned to find out they were wrong.

Mrs. Carroll said she first bought her insurance from State Farm in 1998 shortly after she and her husband acquired their home for \$172,500.

"I told them I wanted full coverage for my house," she said. "I've lived in this area most of my life, and I knew there was a huge fire risk here. I had been evacuated for fires three times as a child."

Two years later, she said, she checked back with the agent to make sure she had enough coverage and increased the coverage for possible additional costs as a result of changes in building codes.

"I said, 'Are you sure this is enough to replace the house?' and she said, 'Oh, that's plenty of coverage,'" Mrs. Carroll recalled. "She had me convinced my house could burn or fall down in the canyon under heavy rains and, yeah, it's covered."

Many homeowners burned out by last year's fires say they made clear they wanted to be able to replace their homes. In interviews, they said they had no way of knowing how much insurance they needed and relied on the agent to set the proper value and charge the appropriate price. Many say they would have been willing to pay more to assure themselves that their losses would be fully covered.

At the time of the fire, the Carrolls' house was insured by State Farm for \$126,000, which, following standard practice, did not reflect the value of the land. Their annual premium was \$730.

With 20 percent in extended replacement coverage and other standard features including a built-in adjustment for inflation and coverage on their two-car garage, fences and driveway as well as an additional 25 percent for anticipated building code changes - upgraded by Mrs. Carroll from the usual 10 percent -

the Carrolls estimate their policy will pay them about \$222,000. But Mrs. Carroll said a contractor hired by State Farm estimated that replacing their losses, not including their clothing and other personal things, would cost nearly \$400,000.

Bill Sirola, a spokesman for State Farm, said it was not clear whether the Carrolls were underinsured. "We are working with that family," Mr. Sirola said. "We are working with other builders on their behalf to get other estimates of their rebuilding costs."

As the insurance companies see it, if people are underinsured it is primarily their own fault.

"It's the homeowner's responsibility to see that his home is properly insured," said Mr. Hartwig of the Insurance Information Institute.

Insurers say the terms of coverage are clearly spelled out in their policies. In California, insurers are also required to mail a statement annually specifying the terms of coverage along with renewal notices.

But many homeowners burned out by last year's fires say they made clear they wanted to be able to replace their homes. In interviews, they said they had no way of knowing how much insurance they needed and relied on the agent to set the proper value and charge the appropriate price. Many say they would have been willing to pay more to assure themselves that their losses would be fully covered.

"They're the experts," said Donald McCormick, a high school math teacher, who lost his home in the Scripps Ranch section of San Diego. "I don't go to the doctor and tell him how to do surgery."

ABSTRACT: The Effect of Air Pollution on Lung Development from 10 to 18 Years of Age

W. James Gauderman, Ph.D., Edward Avol, M.S., Frank Gilliland, M.D., Ph.D., Hita Vora, M.S., Duncan Thomas, Ph.D., Kiros Berhane, Ph.D., Rob McConnell, M.D., Nino Kuenzli, M.D., Fred Lurmann, M.S., Edward Rappaport, M.S., Helene Margolis, Ph.D., David Bates, M.D., and John Peters, M.D.

Background Whether exposure to air pollution adversely affects the growth of lung function during the period of rapid lung development that occurs between the ages of 10 and 18 years is unknown.

Methods In this prospective study, we recruited 1759 children (average age, 10 years) from schools in 12 southern California communities and measured lung function annually for eight years. The rate of attrition was approximately 10 percent per year. The communities represented a wide range of ambient exposures to ozone, acid vapor, nitrogen dioxide, and particulate matter. Linear regression was used to examine the relationship of air pollution to the forced expiratory volume in one second (FEV₁) and other spirometric measures.

Results Over the eight-year period, deficits in the growth of FEV₁ were associated with exposure to nitrogen dioxide (P=0.005), acid vapor (P=0.004), particulate matter with an aerodynamic diameter of less than 2.5 μm (PM_{2.5}) (P=0.04),

and elemental carbon (P=0.007), even after adjustment for several potential confounders and effect modifiers. Associations were also observed for other spirometric measures. Exposure to pollutants was associated with clinically and statistically significant deficits in the FEV₁ attained at the age of 18 years. For example, the estimated proportion of 18-year-old subjects with a low FEV₁ (defined as a ratio of observed to expected FEV₁ of less than 4.9 times as great at the highest level of exposure to PM_{2.5} as at the lowest level of exposure (7.9 percent vs. 1.6 percent, P=0.002).

Conclusions The results of this study indicate that current levels of air pollution have chronic, adverse effects on lung development in children from the age of 10 to 18 years, leading to clinically significant deficits in attained FEV₁ as children reach adulthood.

A Case That Can Decide Your Future

In 2000 and 2001, the major insurance companies claimed they had billions of dollars in “mold claims”. Not surprisingly, regulators and legislators didn’t read the footnotes on all of the insurer-submitted loss calculations. The footnotes clearly stated that amounts paid were for ALL water damage claims, not just “mold related” claims.

Insurance rates, by law, must be set in a forward-looking fashion. Insurance actuaries make predictions about hurricanes, tornados, vandalism, freezes, and other occurrences and carefully calculate anticipated losses. If actuaries are dead wrong and underestimate the losses, the insurance companies, by law, cannot seek rate hikes to make up for their own stupidity.

In late 2001 and early 2002, insurers cried to their legislative and regulatory buddies and produced endless (and boring) sworn testimony about how these “mold claims”, which they acknowledged were covered, were “gonna break ‘em”. The boo-hoos got them hefty rate hike approvals AND the approval to slash the coverage allowed in previously issued policies. That explains why, today you pay far more for far less. But, keep in the back of your mind that the rates you pay today were SUPPOSED to be set based on what the insurance companies EXPECT to pay out in claims made in the future, not set to make up for unforeseen losses.

An intelligent person would question this. After all, if rates are set in a forward-looking manner and the industry no longer has the liability it had in the past, then it would reasonably follow that rates would DECREASE, not increase. In fact, our analysis shows that you should be paying 40-50% of what you paid for homeowner’s coverage in 2001.

Also keep in mind that many policyholders are actually owners of their insurance company. In “mutual companies”, the policyholders are the company owners. Only a handful of insurance companies (such as Allstate, St. Paul/Travelers, etc...) are publicly-traded entities.

Now that we have that out of the way, let’s get to the issue at hand. There is a very meaningful case currently before the

5th Circuit (an important Federal Appeals Court based in New Orleans, LA). The

case, known as Fiess v. State Farm, has major consequences that few appreciate. The Reader’s Digest version of the case is: The Fiess family submitted a water damage claim and that water damage turned into a mold problem costing thousands to cure. Their policy specifically allowed coverage for mold if it was an ensuing loss (the result of a covered peril). The Fiess attorney was young and inexperienced and did not properly argue the ensuing loss aspect of mold and a lower court magistrate



ruled that mold was not covered under the homeowner’s policy issued to the Fiess family by State Farm. The insurance industry celebrated the ruling but they needed holy water thrown on it by a higher court so that they could use the decision to deny claims that had been languishing for years.

Enter the 5th Circuit where most of the justices (I use the term loosely) should have the State Farm logo sewn on their robes. This was just the spot where State Farm stood a good shot of getting its wish list granted. Believe it or not, for as anti-consumer the 5th Circuit is, it’s better than the Texas Supreme Court where all justices (term again used loosely) are slaves to the industry.

Now, it’s important to remember that SWORN TESTIMONY was presented to state officials by insurers a few years ago when they used “mold” as the reason for rate hikes. (Hey, just in case you missed it, health insurers and HMOs used AIDS as a way to rape and pillage in the mid-1980s so this is not a new strategy!) Insurers selling homeowner’s policies stated, in their testimony, that they needed rate hikes because of their liability on COVERED PERILS that included mold related damage that was caused as a result of water damage. (It seems obvious but mold problems can only happen when water damage occurs.)

State Farm, just like the other insurers, KNEW they had the liability under the old

policy and paid on claims, albeit, they rarely paid sufficient sums for proper repairs.

Just weeks before oral arguments before the 5th Circuit occurred, Amicus Briefs were submitted. The Texas Department of Insurance and POA took the side of the Fiess family and asked the 5th Circuit to uphold the language of the policy (a contract) and apply coverage as stated in the policy. The Texas Department of Insurance even threw in a few juicy lines about State Farm’s own testimony before the regulatory agency.

True to form, other insurers weighed in with Amicus Briefs supporting State Farm’s position that mold is NOT covered. This is ironic given that the same insurers provided their boring testimony before state insurance departments about how mold was going to put them into the poor house because of their liability on such claims.

For the layman, an Amicus Brief is also called a “Friend of the Court” brief and is usually submitted by those with an interest in the outcome of a case. Rarely is POA on the same team as the Texas Department of Insurance but on this case, we actually saw eye-to-eye on an issue. Perhaps hell has frozen over.

The “justices” have not yet made up their minds on the matter but their decision will impact hundreds of thousands of homeowners whose claims have been wrongly delayed by insurers for years hoping the 5th Circuit will deliver like the mailman. And they might. The case, it should be noted, has national implications since it is in a Federal court.

No matter which direction the “justices” rule, the fall out will be intense. If they rule in favor of Fiess, claims that have been delayed by the carriers will finally be resolved however, the cost of repairs have grown because mold does not stop growing just because a claim is tied up in the legal system. If the court rules in favor of State Farm, hundreds of thousands of families will never be paid for claims covered by the policies and worst of all, such a ruling would say to insurers that they can deny any type of claim and never look back.

Of course, shareholders and mutual company owners should take management out to the shed to beat them silly for all the claims that were paid but never should have been. Can you say “Class Action”?

All of the Amicus Briefs submitted in this case are available on POA’s website.

FLORIDA WAKES UP TO A NEW INSURANCE REALTY
Post-Andrew Rule Changes Shifted More of the Burden to Individual Homeowners. Paying 2% Deductible Twice.
 By CHRISTOPHER OSTER, CARRICK MOLLENKAMP and CHAD TERHUNE — WALL STREET JOURNAL STAFF

As Floridians begin picking up the pieces from the second devastating hurricane in less than a month, many are also discovering the full effects of a decade of maneuvering by insurance companies and state officials that has dramatically reduced the obligations of private insurers to pay for the impact of catastrophic storms.

Charley and Frances are two of the biggest hurricanes to hit the U.S. since Andrew slammed into southeastern Florida in 1992, wreaking \$15.5 billion in insured damage and wiping out every cent of profit insurance companies had ever generated on property policies in the state. The losses forced 11 insurers out of business and triggered a wholesale revamping of Florida's insurance market in a desperate attempt to prevent other carriers from fleeing the state.

Big players such as Allstate Corp. agreed not to abandon a combined 1.2 million policyholders in Florida only after state officials began cooperating in a legislative and regulatory effort to shift from insurance companies to consumers the burden for paying hundreds of millions of future storm-related losses.

As a result, hundreds of thousands of Florida homeowners -- including many who have paid for what they believed was "full" property insurance -- now find themselves holding the bag for a much bigger portion of the estimated \$10 billion to \$15 billion in insured damage from Frances and Charley than they would have a decade ago.

Florida regulators and legislators allowed private insurance companies to add hefty new deductibles to homeowners' policies and to raise premium rates in some cases by as much as fourfold. Thousands of property owners now hold policies with small local companies, whose financial stability is severely strained by the back-to-back storms of the past month and concerns that others may soon follow. Already, another major hurricane, Ivan, is gathering force in the Atlantic and could threaten Florida by the end of the week.

Big insurance companies say the changes in deductibles and the decision to set up separate units in Florida were necessary to preserve the availability of adequate insurance across the state -- for situations just like the past month's storms. "This is all happening without any market turmoil," says Robert Hartwig, chief economist for the Insurance Information Institute, a trade group.

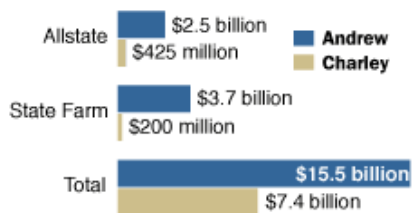
After dumping more than 13 inches of rain along Florida's central east coast on Sunday and knocking out power to about six million people, Frances entered the Gulf of Mexico.

It then made a second landfall Monday near Apalachicola, a major oyster-harvesting area in the Florida panhandle. The storm has been blamed for at least four deaths. Even after being downgraded to a tropical storm, Frances roared into Alabama and Georgia still packing fierce winds and sheets of rain.

Continued on page 13...

LIGHTER LOAD

Insurance payouts from Florida's two largest private insurers following Hurricane Andrew in 1992 and estimated payouts from last month's Hurricane Charley.



Note: Figures are not adjusted for inflation and are net of reinsurance.

Sources: Insurance Information Institute; Morgan Stanley

Charley claims: commercial and residential

Company	Amount
Nationwide	\$381 million
Allstate	\$276 million
Swiss Re	Less than \$200 million
State Farm	Less than \$200 million
St. Paul Travelers	\$140 million
XL Capital	\$125 million
The Hartford	\$91 million
AIG	\$80 million-\$100 million
AXIS Capital	\$60 million-\$80 million
CNA	\$40 million-\$60 million

Florida Wakes Up (continued)

Gasoline retailers and Florida state officials were scrambling Monday to replenish fuel supplies at depleted service stations, as about 2.5 million residents who evacuated from the storm zone began heading back home. Frances also threw another wild card into the unpredictable political equation in Florida -- a critical battleground in the November presidential election. The well-organized relief effort after Hurricane Charley, directed by Gov. Jeb Bush, appeared to blunt the risk of political fallout from that storm for President Bush. But tempers were growing strained in the wake of Frances as relief agencies struggled to get essential supplies, electricity and emergency services into hard-hit areas, and victims of Charley took a second round of torrential rains.

When Hurricane Andrew slammed into Florida in 1992, private insurance companies, primarily Allstate and State Farm Mutual Automobile Insurance Co., picked up the lion's share of the damage tab. The companies were sent reeling by the scale of the devastation, and in the aftermath, there was little debate that changes had to be made in the state insurance system. It will take weeks or months to tabulate the precise losses from Frances and Charley, and how much of that insurers will absorb. But consumer advocates say the increased liabilities shouldered by homeowners during the two recent storms raise the question of whether the changes have been too generous to the insurers.

Already, it is clear that the steps taken by big insurance companies are successfully shielding them from responsibility for huge losses that in

the past would have fallen directly to them. State Farm and Allstate paid a combined \$6.2 billion in claims after Andrew 12 years ago. After Charley, which ripped through Central Florida on Aug. 13, causing considerably less damage than Andrew overall, State Farm and Allstate -- still Florida's two largest private insurers -- estimated their combined losses at just \$625 million, after collections from the state catastrophe fund and private reinsurers. A State Farm spokesman said some of its Florida unit's reinsurance was provided by State Farm itself, but he declined to say how much.

Big Shift

What has happened in Florida is partly the result of a big shift in the way U.S. insurance companies have operated over the past decade. The industry has adopted increasingly sophisticated underwriting tools to avoid insuring higher-risk homes and has taken steps to lay more of the burden to pay claims on policyholders themselves. California residents who face the threat of storms or wildfires, for example, must choose between sometimes barebones coverage offered by insurance pools organized by the state and high-cost policies from niche insurers such as Lloyd's of London. But the shift of responsibility for property losses in Florida -- in terms of the number of policyholders pushed into state-backed insurance funds and the hefty increases in premiums and deductibles -- far exceeds what has happened in most other states.

Insurers in Florida also have shielded themselves from losses through the use of pri-

ivate reinsurance sold by companies including Berkshire Hathaway Inc., large European insurers and Bermuda-based companies including XL Capital and Ace Ltd. Homeowners insurers didn't heavily rely on such reinsurance prior to Andrew and the coverage was hard to come by in the years following that storm. Even so, the state-sponsored relief mechanisms shouldered nearly \$3 billion of Charley's \$7.4 billion in insured damage.

After Andrew in 1992, state officials agreed to set up a backstop fund called the Florida Hurricane Catastrophe Fund guaranteed by the government that will pick up the bulk of the insurance companies' tabs from Charley, Frances and other massive storms. Claims from Charley are expected to consume about \$2 billion of the \$6 billion in cash held by the hurricane catastrophe fund, which has about an additional \$9 billion of non-cash assets. Frances will take another so-far-unknown bite. Once the fund's cash is gone, it can sell bonds to raise more and impose an assessment, or surcharge, of up to 2.27% on each policy written in the state.

In 2002, Florida lawmakers combined another insurer of last resort, the Florida Windstorm Underwriters Association, with the other big state-organized insurer, the Joint Underwriting Association, to form the Citizens Property Insurance Corp. Now, about 800,000 coastal homes that private insurers refuse to fully cover are currently insured by Citizens Property. Its capital base, already rocked by Charley, could be depleted by Frances.

“Now, about 800,000 coastal homes that private insurers refuse to fully cover are currently insured by Citizens Property. Its capital base, already rocked by Charley, could be depleted by Frances.”





Forecasters predicted this hurricane season would be one of the worst ever.

Citizens Property Insurance expects to pay about \$950 million for 37,000 claims related to Charley -- nearly two-thirds of the \$1.5 billion surplus it reported at the end of June. It also could levy a surcharge on homeowners' policies if it runs out of money.

Many of the largest insurers in Florida also have established separate corporate entities to operate in the state. Rather than distributing the cost of Florida losses across all policyholders of the insurance company, as is traditional in the insurance business, the new Florida units pay losses only from the assets of the single-state units. If massive storms wipe out those funds, the Florida companies can dissolve without affecting the parent company's operations elsewhere in the U.S.

For homeowners, the biggest change came through dramatically higher premiums and new deductibles that require policyholders to absorb thousand of dollars in costs from wind damage.

A total of 2.5 million Florida homeowners have policies with windstorm deductibles of 2% of their home's policy value. A further 177,000 homeowners have 5% deductibles, meaning a homeowner with a policy value of \$300,000 would pay \$15,000 to repair hurricane damage before the insurer would pay any part of the claim.

Many homeowners hit by Hurricane Charley three weeks ago were already smarting from having to pay higher deductibles for storm damage. They're livid that they may be forced to pay a second deductible for Frances-related damage when their homes have yet to be repaired. The

damage has been exacerbated in some areas by flooding, which isn't covered by most private insurance under a decades-long practice.

Charley did about \$15,000 of damage to Don Boyle's roof in Orlando, Fla. Then Frances shredded the blue tarps covering his two-story house Sunday and caused eight new leaks in his kitchen, garage and elsewhere. He got up on his roof during Frances and tried to put the tarp back down, but the winds were too strong.

He called his insurer, USAA, to ask whether he risked getting charged a second 2% deductible -- about \$4,000 on damage from the second storm. The company told him a claims adjuster would make

*Florida residents
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another
deductible every
time a hurricane
hits this season.*

that decision after he surveyed the new damage. "Now Ivan is lurking out there," said Mr. Boyle, a 32-year-old engineer at Lockheed Martin. "Paying a \$4,000 deductible again wouldn't be my first choice."

Mac Jones, a 53-year-old mailman living in Belle Isle, south of Orlando, has a 5% deductible totaling \$6,200 on his house. He was incensed at the prospect of having to pay double that if Frances inflicts more damage. "This is legalized price-gouging. They are

ripping me off," Mr. Jones said as the rains and wind of Frances rolled through his neighborhood over the weekend.

He said he realized his deductible had increased only after calling State Farm to report that a massive laurel oak tree in his front yard had fallen on his house during Charley.

Some local insurance agents in Florida said homeowners shouldn't be surprised by the level of their hurricane deductibles, given that numerous notices were sent to policyholders after a separate windstorm deductible was introduced in Florida in 1996.

The decision on charging policyholders one or two deductibles could be open to interpretation. Damage in the same area of the house could be deemed a continuation by an insurer, agents say, but a tree falling on a separate part of the house could be treated as a new claim from Frances. In 1996 insurers were allowed by the state to charge double deductibles for separate storms under a "named storms" provision. Charley and Frances are the first major hurricanes under the windstorm deductible.

Florida officials say the state's onerous deductibles are simply part of the price residents had to pay to keep private insurers in the state. Insurance generally is regulated on a state level, typically by powerful commissioners who have the authority to block rate increases proposed by companies and to set voluminous rules under which insurers operate. But after Andrew hit, many insurance companies said they would abandon Florida unless the state made radical changes in its regulations and rate structures.

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Just months after that hurricane, more than a dozen insurers threatened to dump policyholders, potentially leaving more than one million homeowners without coverage. In April 1993, Allstate alone proposed dropping 300,000 policyholders.

The following month, then-Florida Insurance Commissioner Tom Gallagher issued a moratorium preventing insurers from refusing to renew policyholders. Almost simultaneously, he urged Florida's governor and legislature to form the insurer-funded hurricane catastrophe fund that would help shield insurers from future hurricane losses. The fund was formed later in 1993, and insurers began paying premiums into it. The costs were passed along to policyholders in the form of higher premiums.

Just weeks after Andrew hit, the state also created the Florida Residential Property and Casualty Joint Underwriting Association, an insurer of last resort for thousands of property owners that private companies were no longer willing to cover. By early 1994, it had 300,000 customers, despite offering only limited coverage on property and some contents of homes.

Even with the state and the new association taking up a significant portion of hurricane risks, insurers in Florida also asked for huge increases in premiums. In October 1993, the state approved increases for State Farm and Allstate of 24% and 30%, respectively. Still, private insurers remained lukewarm about doing business in the state. The Joint Underwriting Association had more than doubled to 760,000 policyholders by mid-1995.

To induce insurance companies to compete for more of those homeowners, Mr. Gallagher's successor as insurance commis-

sioner, Bill Nelson, now a U.S.

senator from Florida, proposed offering private insurers \$100 for every policyholder they took out of the JUA. Insurance regulators also promised some insurers they wouldn't have to pay assessments that other carriers would if a hurricane drained the underwriting association's assets. In response, a handful of small insurers, including Florida Select and Sunshine State, were formed with the specific purpose of taking policies out of the state JUA pool.

Dropping 90,000 Policyholders

Big insurers continued dumping policies. After the state-imposed moratorium against dropping insurance policies, the Florida legislature passed a law that said insurers could refuse to renew no more than 10% of their policyholders in any one year. Allstate took advantage of that provision and refused to renew 90,000 policyholders between 1994 and mid-1996.

In July 1996, Allstate said it would stop sending nonrenewal notices to policyholders, sparing another 37,000 homeowners who already had been told they would be dropped after Sept. 16 of that year. But the company agreed to do so only after the state approved its fifth rate increase since Andrew, a 22% jump. More importantly, Florida officials gave Allstate the green light to form the Allstate Floridian Insurance Group, a subsidiary that would issue policies only in Florida and potentially shield the parent company from any losses in the state that exceeded the unit's financial resources.

Allstate had been pushing to form the Florida-only company since shortly after Andrew, but Mr. Gallagher had turned down the request. "I didn't think it was a good idea," Mr. Gallagher says, adding that he didn't want the big insurer to set up a thinly capitalized subsidiary without being

obligated to back it up in the event of another hurricane.

But after Mr. Nelson took office, he approved Allstate's request. Allstate capitalized the company with \$450 million, and it currently has total assets of more than \$1 billion. It's not clear how much of Allstate's \$425 million in Charley losses will be taken out of that capital, as the Floridian company doesn't include Allstate's auto business, or non-Florida losses from the recent hurricanes. But rating agency A.M. Best last week placed the company on watch for a possible downgrade of its rating for financial strength.

Until last month, the company had been a money-maker for Allstate. Over the past three calendar years, Allstate Corp. has taken about \$300 million in profits out of the Florida subsidiary, according to A.M. Best.

Michael Trevino, a spokesman for Allstate, said forming the separate "well capitalized" unit in Florida was a sensible business decision. He said that if a storm strained Allstate Floridian's capital, the decision of whether Allstate Corp. would pump money into the firm would be difficult, given the damage such a decision might have on Allstate's reputation nationwide and potentially costing the company auto-insurance business in Florida.

Insurers in the mid-1990s also began adding "windstorm deductibles" to their policies. Typically homeowners-policy deductibles are expressed in dollar terms -- \$500 is common. But in Florida and other coastal locations, insurers required 2% and higher deductibles to shift the cost of claims to policyholders. In 1996, the legislature approved deductibles as high as 5%.

Insurers also have been able to dramatically raise their premiums through an unusual three-person private arbitration panel set up by the Florida legislature in 1996 to settle price-increase disputes

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Insurers also have been able to dramatically raise their premiums through an unusual three-person private arbitration panel set up by the Florida legislature in 1996 to settle price-increase disputes between insurance firms and the state insurance regulator. Previously, the state insurance commissioner held most of the power in approving rate increases. The panel is composed of one person nominated by the insurer, one person chosen by the insurance commissioner and a third person chosen by the two others.

Mr. Nelson decried the use of the panel as "an arbitration system that allows companies to go around the people's elected commissioner." In the summer of 1997, Mr. Nelson shot down a request by State Farm Fire & Casualty Co. to raise rates by about 20%. State Farm appealed to the panel, and in its first hearing, in Miami, the panel voted 2-1 to approve State Farm's request. It was the first of several defeats the panel handed Mr. Nelson.

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15 Orange Street
Charleston, SC 29401

CALL US TODAY. IT'S TOLL-FREE

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When to Test A Home For MOLD.



When a homeowner suspects their home is what's causing mysterious symptoms, they often pick up the phone and call an air quality professional to test their home.

Suddenly, their suspicions are confirmed. The results come in and it's bad news – the home has a severe toxic mold problem that requires extensive and expensive repairs.

The news also does something few contemplate before making the call: **their home value has just taken a huge hit.** This is because a homeowner must disclose any and all KNOWN environmental conditions if it is listed for sale.

POA neither advocates for or against testing. We certainly do not suggest that homeowners should commit fraud and not disclose a KNOWN problem. But, it is also fair to warn those who consider testing that what they find out is a written record that, by law, must be disclosed if the owner decides to sell the property. If not disclosed, the homeowner

could face serious legal problems if the house sells and the buyer was never told of the testing results.

A homeowner does not have to disclose what is suspected; disclosure is only required if a homeowner KNOWS (i.e. had testing done) of a problem.

POA does suggest that buyers test and we even provide an inexpensive way to accomplish this goal. Frankly, a new home buyer can use the results to negotiate a better price.

So, in plain English, give serious thought and consideration to testing BEFORE you proceed. If you are convinced that you should test, here's a link for an inexpensive and accurate test that can be done through one of the leading universities involved in air quality issues:

