

Another dispute over insurance price controls heads to court

by William Lutz

Another major homeowners' insurance carrier filed legal action against the state over the weekend.

Allstate Insurance is appealing to state district court the Texas Department of Insurance's (TDI) disapproval of its rate.

A Travis County district judge issued a temporary restraining order Aug. 24 allowing Allstate to charge the new rates on the grounds the state had not given the company sufficient notice that it was rejecting its filing. The court is expected to have another hearing in the near future on whether to extend that injunction.

Although the case is certainly important to Allstate, there are broader implications to the state and the industry as a whole.

When the insurance market was last debated in 2003, House members split: some wanting to use regulation to lower rates, others wanting to let the market and competition determine rates.

How the courts act in the months ahead could determine whether Texas goes to a market-based regulatory system or a government-regulated system.

In 2003, the state adopted SB 14, a major rewrite of the state's homeowner's insurance laws. The bill gave insurers freedom to write their own contracts ("policy forms" in industry parlance). On rates, however, the insurance department maintained some control. Some lawmakers wanted Texas to use a "prior approval" system, whereby insurers must get state approval for rates.

Others wanted "file-and-use," whereby insurers file rates, then use them unless they are rejected by the Commissioner of Insurance.

The final bill was a compromise between the two. The bill called for prior approval for a little more than one year, post-enactment. After that, the state switched to file-and-use, but the commissioner retains the authority to place under prior approval companies he believes need more supervision.

After the bill was passed, most insurers reached a deal with then-Insurance Commissioner **Jose Montemayor**. Many of these deals generally involved at least a 10 percent rate cut from rates in effect in early 2003.

One insurance carrier that did not reach a deal was State Farm, which appealed the commissioner's decision to district court. State Farm won in Travis County District Court, and

the state has appealed to the 3rd Court of Appeals. Several cases between State Farm and the state are currently pending before that court.

Now Allstate is in court with the state, meaning that two of the three largest homeowners' carriers are fighting the insurance department in court.

SB 14 gives the commissioner substantial leeway in implementing the bill. How the commissioner uses that authority plays a big role in how competitive the state's insurance market is and how many companies want to do business here, industry advocates say.

Allstate's new rates average a 5.9 percent increase over the prior rates. The company had initially filed a higher rate increase but withdrew it when the department told the company it would object.

" [This filing] will give us the financial strength that we need to be there for our customers when they need us.

-- Allstate spokesman Joe McCormick

The company argues the new rates are competitive with the other major insurers and are necessary to ensure the company has the reserves necessary to pay claims, if disaster strikes.

Insurance is about spreading the risk of a peril among a large pool of customers, so if something bad, e.g., a hurricane, happens, no one customer is thrown into bankruptcy. In order for insurance to work, the carrier must have sufficient reserves to pay foreseeable claims. If not, the solvency and usefulness of an insurance policy are put at risk.

Allstate spokesman **Joe McCormick** said the filing ensures Allstate "rates that are adequate, that will give us the financial strength that we need to be there for our customers when they need us. Allstate takes a long term competitive view of our rating. This filing was actuarially justified. Our rates are very competitive."

Commissioner of Insurance **Mike Geeslin** said the department's actions are consistent with the law and encouraged consumers to shop for lower rates.

"The recent actions are a mere formality, a simple exercise of laws," said Geeslin in a state-

ment. "The company filed a rate increase on the same day that it took effect, so the response had to be swift. We have been working with Allstate for several weeks, and even with this most recent rate filing maneuver, we will continue to work with the company on resolving these issues. The goal of a stable market - a challenge for any Gulf Coast state - is reached via the simple plan of justified rate changes and, where possible, gradual change. We feel Allstate can help us reach this goal and want them to be a key player in the market."

The department's recent actions are troubling for some free market advocates. "The marketplace for both homeowners' and wind-storm insurance is not being allowed to meet the needs of Texas homeowners or investors," said **Bill Peacock**, director of the Texas Public Policy Foundation's Center for Economic Freedom. "Without meaningful reforms and a new focus at TDI, it will be Texas taxpayers and consumers who will foot the bill for these harmful policies."

The Foundation issued a paper Aug. 28 titled *Modernizing the Texas Insurance Marketplace*. The paper calls for regulating for solvency only and letting markets determine prices, a system already in place in Illinois.

"While regulations may in fact create lower rates for some high-risk customers, they achieve this by increasing rates for low-risk consumers," the paper argues. It also states that government price controls reduce the incentives for businesses to be more efficient or to innovate.

"The file-and-use system that the Legislature implemented back in 2004 was put in place to help be a catalyst to competition, to help insurers to be more innovative and responsive to consumer needs ... That benefits consumers," McCormick said.

Though TDI is currently fighting insurance rate increases with its regulatory authority, Geeslin also urged Texas consumers to use the market and competition to get better rates, particularly while the current legal action is pending.

"In the meantime," he said, "all insurance consumers should shop for a lower premium and policy benefits that suit their particular needs. Market forces can be a form of positive influence for any company. Remember, do not cancel a policy until the new policy takes effect, and always check out a company and the policy coverage terms before you make a change." ■

