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Insurers Face Legal Battles Over October Fires

LOS ANGELES - A lawsuit filed Wednesday in Los Angeles could be the beginning of a massive legal battle over alleged bad faith by insurance companies in the wake of October's Southern California firestorms, lawyers say.

Lawyers from four Southern California powerhouse plaintiffs' firms - Shernoff, Bidart & Darras; Engstrom, Lipscomb & Lack; Girardi & Keese; and Levine, Steinberg, Miller & Huver - filed suit on behalf of five Los Angeles County residents who say they were forced to pay full premiums on their homeowners' insurance even though their homes no longer exist.

Wildfires that ringed Riverside, Orange, Los Angeles, Ventura and San Diego counties last fall destroyed 3,500 homes.

The homeowners alleged breach of duty of good faith, breach of contract, fraud and unfair business practices. *Luscombe-Schwab v. State Farm BC315099* (L.A. Super. Ct., filed May 5, 2004).

Lawyers predict hundreds of suits over October coverage could drag on for years, similar to the fallout after the Oakland Hills fires in 1991 and the 1994 Northridge earthquake.

"Knowing insurance companies the way that I do, they usually like to delay things as long they can," attorney William Shernoff said.

State Farm Insurance Co. spokesman Scott Smith declined to comment on the suit because company officials had not yet seen it. But he said the company has settled a majority of the claims filed over the firestorms.

"Nails are going into wood even as we speak," Smith said.

Allstate Insurance Co. and Farmers Group, two other named defendants in the case along with Fire Insurance Exchange and SAFECO Insurance Co., declined to comment.

State Insurance Commissioner John Garamendi has set up a Firestorm Task Force to investigate problems and supports legislation to help homeowners.

"We're hoping that we can get the support we need to provide those protections and keep this from rising to the level of the problems after the Oakland Hills fires," said Norman Williams, spokesman for the Department of Insurance.

Williams noted that the Assembly Committee on Insurance passed AB2199 on Wednesday. The bill, authored by Assemblywoman Christine Kehoe, D-San Diego, extends the time that homeowners have to rebuild, replace or repair their insured property to 12 months in normal conditions and 24 months in catastrophic circumstances, like the October fires. Most policies have a 180-day limit, Williams said.

"You shouldn't be hampered by the term limits of your insurance policy," Williams said.

The investigation will be conducted by experts from within Garamendi's office and is just getting under way, Williams said. He couldn't predict how long the investigation would take.

If investigators find unlawful behavior by the insurance companies, Garamendi could order them to pay heavy fines or even revoke their licenses, according to Williams.

"[We hope to] get to the bottom of what seems to be a serious problem," Williams said.

Garamendi announced the task force last week as he concluded four town hall meetings at which fire victims complained bitterly about their insurers.

"I'm giving [the insurance companies] bad marks," Garamendi told the Associated Press last week. "I've gone through four of these hearings and these problems are serious, they're pervasive, and the biggest insurance companies in this nation are not properly handling claims ... Clearly, they have disobeyed the law."

His comments were a departure from his February statement to the Los Angeles Times that the insurance companies were "behaving properly" in "the great majority of cases."

Harvey Levine of San Diego's Levine Steinberg called the actions by the insurance companies "blatant fraud." The suit alleges that it is illegal for the insurance companies to charge fire victims full premiums, and that they instead should bill only a nominal fee.

"It's just like charging life insurance after the person is dead," Shernoff said.

In some instances, the insurance companies have even raised the premiums higher than they were before the fire, according to Jerry Ramsey of Engstrom Lipscomb.

The attorneys are seeking class certification because every one of the hundreds of victims they've talked to are being asked to pay their premiums in full, Shernoff said.

"We want to fix this for everyone," Shernoff said.

The plaintiffs and hundreds of other victims are also dealing with problems of being underinsured. There is not enough money in their policies to rebuild their homes, Ramsey said.

Victims of the Oakland Hills fires also dealt with underinsurance, but their policies skimmed on contents and other structures, not the home itself, according to Ramsey. At that time, insurance companies guaranteed they would pay the full amount it cost to rebuild the policy holder's home.

In 1995, most insurance companies did away with the guaranteed replacement costs, largely because of the losses they incurred in the Oakland fires, according to news reports. Instead, the policies offered "replacement coverage," which actually provides only part of the cost of rebuilding. But by using the term replacement, insurers misled many homeowners into thinking that their properties were covered in full, Shernoff said.

Ramsey and Levine also have filed underinsured lawsuits, and expect many more.

"That'll drive several hundred lawsuits before this is over," Ramsey predicted.

Paying their premiums is just the latest setback for the plaintiffs in the new case, Levine said. They are also battling their respective insurance companies over underinsured policies and have not received any money for their homes.

"This is like a little cherry on top of an ugly cake," Levine said.

The lawyers bringing the premium action, with the exception of Levine, represented victims of the 1994 Northridge earthquake in a class action, *Allegro v. State Farm*, 45 Cal.App.4th 1093 (1996). In that suit, 165 Los Angeles homeowners alleged that State Farm fraudulently reduced their earthquake coverage.

The 2nd District Court of Appeal held that the state's unfair business practices law could be applied to insurance companies. The parties settled for a reported \$100 million.