

## MARKET BAROMETER

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codes. This creates even more price competition as non-admitted markets are fighting to maintain their position. Just about any business that pays over \$100,000 in premium can generate savings if they organize a competitive bidding situation. Many accounts are moving to new insurers. Of those that move, almost 33% are doing so with a new agent or broker."

To maintain market share, agents and brokers must be very aggressive on new business; otherwise, lost business will exceed new, which ultimately leads to demise. Kerr cautions agents to prepare for a tough 2007. "In a soft market like this, agents need to hustle to maintain their books of business," he says. "Renewals require more work and commission income is reduced. The only way to grow is to write new business and generally that means you are taking it from someone else."

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## Judge Rules Against State Farm in Katrina Case

On Jan. 11, Mississippi federal trial court Judge L.T. Senter Jr. ruled against State Farm and in favor of a Biloxi couple on their claim that Hurricane Katrina wind damage destroyed their home. The homeowners, Norman and Genevieve Broussard, sued State Farm after the company refused to cover any of the damage to their home following the storm. In the lawsuit, they sought to recover the full insured value of their home, plus \$5 million in punitive damages.

State Farm's defense was that Katrina's storm surge caused the damage to the Broussard's home. State Farm also took the position that damage caused by a combination of wind and water was excluded from coverage under the Broussards' insurance policy, even if the wind damage preceded the water damage.

Following the closing arguments in the case, many were surprised when Senter decided not to let the jury determine State Farm's liability to the Broussards. Instead, he exercised his right as judge to rule that, as a matter of law, State Farm was liable to the Broussards for their actual damages of \$223,292. Senter said State Farm did not meet its burden of proof that the storm surge was the cause of all damage to the home. He also noted that the testimony did not establish how much damage was caused by wind and how much by water.

The liability decision left the jury with only the question of the appropriateness and amount of punitive damages to be awarded against State Farm, if any. The jury came back quickly on the same afternoon with an award of \$2.5 million in punitive damages against State Farm.

State Farm has said it is likely to appeal the judge's ruling and the punitive damages awarded. Kim Brunner, executive vice president, secretary and general counsel of State Farm said in a State Farm press release that, "We believe the ruling is inconsistent with the insurance contract and Mississippi law."

There are hundreds of other cases pending before Senter (in addition to cases pending in Mississippi state court) that appear to involve claims against State Farm similar to the claims made by the Broussards. In the past, Senter issued several rulings in other Katrina cases that were favorable to insurers. In light of those rulings, Senter's decision in this case came as a shock to many



in the industry, so much so that he ordered a recess after announcing the ruling to give attorneys time "to get over the shock." The key question is whether this ruling signals likely outcomes for future cases that go before Senter.

It has been widely reported in the press recently that State Farm is in negotiations with both the claimants and Mississippi Attorney General Jim Hood for a group settlement of as many as 639 Katrina-related claims in Mississippi. The Broussard case was not believed to be part of those settlement talks and it is unknown at press time how this verdict will affect the possibility that such a settlement will be reached. Many observers believe this decision may spur State Farm to agree to settle pending cases rather than face the risk of losing hundreds of additional lawsuits in which punitive damages may be assessed against it.

The insurance industry is following this decision closely. In press reports, Robert Hartwig, president and chief economist of the Insurance Information Institute, was quoted as saying that any punitive damage award in this case would be "distressing" for insurance carriers. It is expected that carriers involved in similar litigation will carefully review the facts of the claims against them and the policy language in question to determine if they want to make efforts to settle the cases rather than risk trials that may result in an outcome like that of State Farm in the Broussard case. Many also believe it is likely that carriers will carefully review their policy language and its exclusions to determine if any changes should be sought to more clearly exclude claims for water damage, even if it is preceded by otherwise covered causes, such as wind.