

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA, EX REL
KERMITH SONNIER,

Relator

V.

ALLSTATE INSURANCE COMPANY,

Defendant

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CIVIL ACTION NO. _____

TO BE FILED IN CAMERA
AND UNDER SEAL (Pursuant to
31 USC Section 3731)

RELATOR'S COMPLAINT FOR DAMAGES UNDER THE FALSE CLAIMS ACT
31 USC SECTION 3729 ET SEQ

NOW INTO COURT, through undersigned counsel, comes Relator, KERMITH SONNIER, a citizen and resident of the State of Louisiana, seeking monetary damages and civil penalties on behalf of the United States of America and for a cause of action alleges as follows:

CAUSE OF ACTION

1. This is an action to recover monetary damages and civil penalties on behalf of the United States of America arising out of the false claims presented for payment within the six (6) years immediately preceding the date of filing of the present action to the United States of America by the defendant, Allstate Insurance Company ("ALLSTATE"), under the National Flood Insurance Program, 42 USC Section 4001, et seq. This is a cause of action brought by a Relator, KERMITH SONNIER, pursuant to the False Claims Act, 31 USC Section 3729 et seq, and the Qui Tam provisions of that statute, 31 USC Sections 3730 and 3731.

2. 31 USC Section 3730(b)(2) provides that "The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the Court

so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.” Relator, SONNIER, is filing this matter under seal.

3. A copy of the evidentiary disclosure required by the False Claims Act has already been served on the United States.

JURISDICTION AND VENUE

4. 31 USC Section 3732 provides that “Any action under section 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.”

5. As hereinafter set forth, defendant, ALLSTATE, transacts business in this judicial district and this action may properly be brought against said defendant in this district.

PARTIES

6. At all relevant times, Relator, KERMITH SONNIER, was and is a citizen and resident of the State of Louisiana, residing in Lake Charles, Louisiana.

7. Defendant, ALLSTATE INSURANCE COMPANY (“ALLSTATE”), is, and at all times herein mentioned was, a corporation duly organized and existing under and by virtue of the laws of the state of Delaware, with its corporate headquarters/home office at 2775 Sanders Road, Northbrook, Illinois. Under the “Write-Your-Own” (“WYO”) program created by Congress in 1983 pursuant to the “National Flood Insurance Program” (“NFIP”), and pursuant to a written contract with the NFIP, ALLSTATE was and is authorized to write, sell, administer and service flood

insurance policies in the form of a Standard Flood Insurance Policy (“SFIP”) to any owner of insurable property, provided that the community in which the property is located is participating in the NFIP. 44 CFR Sections 61.4(b), 61.13(d), 61.13(e), and 62.23(c). At all times relevant hereto, ALLSTATE has written, sold, administered and serviced flood insurance policies in the state of Louisiana as well as other states throughout the United States and, in particular, ALLSTATE has written, sold, administered and serviced flood insurance policies within this judicial district and wrongful acts such as are complained of in this action occurred within this judicial district.

FACTS COMMON TO ALL CAUSES OF ACTION

RELATOR

8. Relator is a licensed insurance adjuster with 30 years experience in adjusting both commercial and homeowner insurance claims both as an independent adjuster representing insurance companies and a public adjuster representing insureds. He is a principal shareholder of Sonnier & Fisher Public Adjusters, LLC, a public adjusting firm based in Lake Charles, Louisiana. In the course of representing numerous homeowners and businesses on flood and wind claims arising out of Hurricane “Charlie” on August 25, 2004, Hurricane “Frances” on September 3, 2004, Hurricane “Ivan” on September 16, 2004, Hurricane “Jeanne” on September 27, 2004, Hurricane “Katrina” on August 28, 2005, Hurricane “Rita” on September 25, 2005, Hurricane “Dolly” on July 23, 2008, Hurricane “Gustav” on September 1, 2008, and Hurricane “Ike” on September 13, 2008, Relator learned the facts and circumstances surrounding the allegations made in this complaint.

9. On or about December 10, 2009 Relator submitted a full evidentiary disclosure to the United States Attorney for the State of Louisiana, including all relevant and material evidence in his possession.

THE NATIONAL FLOOD INSURANCE PROGRAM

10. Private property/casualty insurance policies generally exclude flood damage, which is instead covered by federally backed flood insurance under the authority of the National Flood Insurance Act of 1968, 42 U.S.C. Sections 4001 et seq. Since 1968, the federal government has offered flood insurance policies through the NFIP, a program now administered by the Federal Emergency Management Agency (“FEMA”), U.S. Department of Homeland Security. Participation in the NFIP is based on an agreement between individual communities and the federal government. If a community adopts and enforces a floodplain management ordinance to reduce future flood risk to new construction in floodplains, the federal government will make flood insurance under the standard SFIP policy available within the community as a financial protection against flood losses. The insurance is designed to provide an insurance alternative to disaster assistance to reduce the escalating costs of repairing damage to buildings and their contents caused by floods.

11. In 1973, Congress passed the Flood Disaster Protection Act of 1973. The 1973 Act prohibits federal agencies from providing financial assistance for acquisition or construction of buildings, or certain disaster assistance in the floodplains in any community that did not participate in the NFIP by a certain date. Additionally, the Act mandated that federal agencies and federally insured or regulated lenders had to require flood insurance on all grants and loans for acquisition or construction of buildings in designated “Special Flood Hazard Areas.” This requirement is referred to as the “Mandatory Flood Insurance Purchase Requirement. It resulted in a dramatic increase in

the number of communities that joined the NFIP in subsequent years. Almost all communities in the United States with significant flood hazards now participate in the NFIP.

12. The SFIP is issued on one of three available policy forms regardless of which WYO Company sells the property, depending on the occupancy of the building, to provide coverage for the peril of flood: The *Dwelling Form* is used to insure 1-4 family buildings and individual residential condominium units. The *General Property Form* covers residential buildings of more than 4 families as well as non-residential risks. The *Residential Condominium Building Association Policy Form* insures condominium associations.

13. The vast majority of SFIPs (more than 95%) are sold through private insurance companies such as defendant, ALLSTATE, through the WYO program, although a small proportion of policies are sold through state-licensed property and casualty insurance agents and brokers who deal directly with FEMA. The premiums charged for NFIP flood insurance coverage by a WYO Company are the same as that charged by the federal government through the direct program.

14. Funding for the NFIP is through the National Flood Insurance Fund ("NFIF"), which was established in the Treasury by the 1968 Act. Upon collection of premiums from SFIP policyholders, the WYO insurance companies retain approximately thirty percent (30%) of the premium for themselves as their fee for handling the policy, and then forward the balance to FEMA for deposit into the NFIF. These net premiums, along with a \$30 federal policy fee on each policy sold, are used to pay losses, service the policies, pay operating and administrative costs, and pay interest to the Treasury on any loans. (The NFIP has the authority to borrow from the Treasury to cover any shortfall in any given disaster. However, such loans must be repaid from flood insurance premiums together with interest as soon as practicable.)

15. The WYO private insurance companies such as defendant, ALLSTATE, issue policies and adjust flood claims in their own names under the NFIP. FEMA pays losses through a letter of credit and sets the rates, coverage limitations, and eligibility requirements.

16. When a claim is made under an SFIP, the WYO Company which sold the policy is required to adjust the claim in accordance with the federal regulations. 44 C.F.R. Section 62.23(d) (“A WYO Company issuing flood insurance coverage shall arrange for the adjustment, settlement, payment and defense of all claims arising from policies of flood insurance it issues under the [NFIP], based on the terms and conditions of the standard Flood Insurance Policy.”)

17. Flood insurance claims can be adjusted using either an independent adjuster or an in-house adjuster employed by a WYO Company. In major disasters, the WYO Company will often hire a third party independent adjusting company to handle the claims adjusting process. These independent adjusting companies are generally staffed by individual adjusters who work for the independent adjusting company under an independent contractor relationship, although both the independent adjusting companies and the individual independent contractor adjusters generally answer and report directly to the WYO Company claims management.

18. In adjusting flood claims under SFIP policies, the WYO Companies are fiscal agents of the federal government, and payments on SFIP claims are a direct charge on the United States Treasury. See *Wright v. Allstate Ins. Co.*, 415 F.3d 384, 386-387 (5th Cir. 2005). Further, to the extent that a WYO Company presents a claim for reimbursement under the NFIP to the federal government, that claim is presented to an officer of the United States Government (specifically, to the Director of FEMA).

19. As a fiscal agent of the federal government, in adjusting SFIP claims, assessing damages, determining the amount of flood damages as opposed to wind damages, deciding the correct repair or replacement costs and unit prices on damaged items of property, and presenting claims to the Director of FEMA for reimbursement of amounts paid or to be paid to SFIP policyholders for flood damage under the SFIP policy, defendant, ALLSTATE, owed a duty of reasonable care, a duty of utmost good faith and fair dealing, and a fiduciary duty to the federal government to adjust such claims in a correct and competent manner, and not to place ALLSTATE's own economic interests before those of the federal government.

20. According to FEMA, in the majority of cases, the same WYO Company that sold the SFIP also insured the property for wind damage. See *GAO-08-28, the United States Government Accountability Office Report to the Ranking Member, Committee on Financial Services, House of Representatives, p. 9, fn. 7*. This December 2007 Report concludes that this creates a clear conflict of interest between the WYO Company and the federal government when the WYO Company acts as the adjuster on both the SFIP and wind policy claims:

“Finally, there is an inherent conflict of interest when the same insurer is responsible for assessing damages for its own property-casualty policy, as well as for the NFIP policy, each covering different perils on the same property. As part of the WYO arrangement, private property-casualty insurers are responsible for selling and servicing NFIP policies, including performing the claims adjustment activities to assess the cause and extent of damages. When the WYO insurer writes and services its own policy, along with the NFIP policy for the same property, the insurer is responsible for determining the cause of damages and, in turn, how much of the damages it will pay for and how much the NFIP will cover. In certain damage scenarios, the WYO insurer that covers a policyholder for wind losses can have a vested economic interest in the outcome of the damage determination that it performs when the property is subjected to a combination of high winds and flooding. In such cases, a conflict of interest exists with the WYO insurer as it determines which damages were caused by wind, to be paid by itself, and which damages were caused by flooding, to be paid by NFIP. Moreover, the amount WYO insurers are

compensated for servicing a flood claim also increases as the amount of flood damage on a claim increases – an allowance of 3.3 percent of each claim settlement amount.” (Id. p.12.)

THE PROCESS OF ADJUSTING FLOOD CLAIMS

21. A property owner with flood insurance coverage who has experienced hurricane related flood loss or damage can initiate a flood insurance claim by contacting the WYO Company that sold the NFIP flood policy, either directly or through the insurance agent who sold the policy to the property owner and the agent relays the claim information to the WYO Company. In either instance, the WYO Company assigns a flood claim adjuster to adjust the claim. That adjuster will then inspect the property to determine the cause and scope of the damage caused by flooding and the extent to which the damage is covered under the NFIP flood policy. The adjuster will take notes, measurements, and photographs of the specific property damage, and then prepare a formal written estimate of the loss.

22. Once the assessment of a flood damaged property is complete, the adjuster uploads the estimate, along with the adjuster's formal written report on the property owner's claim and an invoice for the adjusting fees and out of pocket costs, to the WYO Company. The WYO Company then reviews the claim, provides the policy holder with a copy of the adjuster's estimate of flood damage, and approves or denies it for payment to the policy holder. Once the WYO Company has approved the claim and agreed with the policyholder on a final settlement figure, the policy holder receives payment for the flood damage claim directly from the WYO Company. The WYO Company then receives reimbursement of flood claim payment from the federal government.

23. To help carry out the task assigned to the designated adjusters to prepare an estimate of loss or damage, the majority of WYO Companies require the adjusters to use claims processing software that organizes the damage information and estimates the repair or replacement costs for such damages. Factors utilized in determining loss estimates include the square footage of the building, the type of building materials, and the cost of both materials and labor at the market rate at the locale where the damage occurred.

24. The three claims processing software programs most commonly used in the insurance industry are “Integriclaim,” manufactured by Marshall & Swift/Boeckh, LLC. (“MS/B”), “Xactimate,” manufactured by Xactware, Inc., a subsidiary of Insurance Services Office, Inc. (“ISO”), and “Simsol” manufactured by Simultaneous Solutions, Inc. Relator has been informed and believes, and thereon alleges, that neither MS/B, Xactware, nor Simsol publish a separate unit price list for flood damage and wind damage, and that the unit prices for removing and repairing or replacing damaged items in the Integriclaim, Xactimate, and Simsol software programs are the same whether the estimate is being generated for a flood claim or a wind claim.

Count I
(Violation of 31 USC Section 3729(a)(1) Against Defendant, ALLSTATE)

25. Relator hereby restates, replays, and incorporates herein by reference the allegations contained in paragraphs 1 through 24, inclusive.

26. Defendant, ALLSTATE, acting through its officers, claims management personnel, in-house claims adjusters, employees, agents, independent adjusting companies, and independent adjusters, knowingly presented claims for payment of NFIP flood insurance claims to an officer of

the United States Government, namely, the Director of FEMA. The claims thus presented by defendant, ALLSTATE, were direct charges against the United States Treasury.

27. The foregoing claims were submitted or caused to be submitted and presented or caused to be presented by defendant, ALLSTATE, for payment or approval.

28. The foregoing claims were paid by the United States Government through withdrawal of funds from the NFIF pursuant to the procedures established under the NFIP.

29. The claims presented by defendant, ALLSTATE, were false and/or fraudulent in that ALLSTATE deliberately allocated higher unit prices on the NFIP flood insurance claims (for which it received reimbursement dollar for dollar from the federal government) than in the loss estimates prepared in response to wind claims (which were paid directly by ALLSTATE with its own funds) despite the claims arising from the same insured property for damage or loss caused at the same time and by the same disaster. Through this process, a single unit at one property – *e.g.*, a single sheet of drywall in a residence -- damaged in one event was assessed at two different costs, a higher cost for that portion of the unit attributed to flood damage and a lower cost for that portion of the unit attributed to wind damage. In so doing, defendant, ALLSTATE, defrauded the federal government and breached its duty of reasonable care, duty of utmost good faith and fair dealing, and fiduciary duties as a fiscal agent of the federal government, all to the direct monetary benefit of defendant, ALLSTATE.

30. Relator is informed and believes, and thereon alleges, that defendant, ALLSTATE, requires its independent adjusters to use the Integriclaim claims processing software to prepare the estimate on an NFIP flood policy claim, and that ALLSTATE can modify the Integriclaim unit price list before adjusting claims, and this Relator is informed and believes, and thereon alleges, that the

majority of unit prices for the most common, major repair or replacement items which are found in most residential and commercial loss estimates and add the most to the bottom line of the estimate, were manipulated by defendant, ALLSTATE in the process of preparing NFIP flood policy estimates and submitting them to the federal government for reimbursement. Relator lists, by way of example, the following instances of unit pricing by defendant, ALLSTATE, within the State of Louisiana that evidence this pattern of deliberate, false, and fraudulent manipulation of unit pricing to the detriment and loss of the federal government and to its direct benefit:

A. DRYWALL

ALLSTATE's price allowed on wind policy estimates of loss in the State of Louisiana for the item "R/R (remove and replace) drywall" was between \$0.73 and \$0.81 per square foot. However, on NFIP flood policy loss estimates, ALLSTATE allowed \$1.53 per square foot, a difference of between \$0.72 and \$0.80 per square foot. Thus, assuming the true and correct cost to remove and replace flood damaged drywall was between \$0.73 and \$0.81 per square foot (*i.e.*, the same cost listed by defendant, ALLSTATE, to remove and replace that portion of the same unit of drywall covered under the wind policy issued for the same property by defendant, ALLSTATE, and applicable to the same loss event), ALLSTATE caused the federal government to overpay ALLSTATE between \$0.72 and \$0.80 for every square foot of drywall called out in every NFIP flood policy loss estimate adjusted in the State of Louisiana and initially paid by ALLSTATE but subsequently submitted to the federal government for full reimbursement to ALLSTATE.

B. PAINT

ALLSTATE's price allowed on wind policy estimates of loss in the State of Louisiana for painting damaged areas was between \$0.15 and \$0.38 per square foot. However, on NFIP flood

policy estimates, ALLSTATE allowed \$0.56 per square foot, a difference of between \$0.18 and \$0.41 per square foot. Thus, if the true and correct cost to repaint flood damaged property was between \$0.15 and \$0.38 per square foot (*i.e.*, the same cost listed by defendant, ALLSTATE, to paint the same unit of drywall covered under the wind policy issued for the same property by defendant, ALLSTATE, and applicable to the same loss event), ALLSTATE caused the federal government to overpay ALLSTATE between \$0.15 and \$0.41 for every square foot required to be painted in every NFIP flood policy loss estimate adjusted and initially paid by ALLSTATE but subsequently submitted to the federal government for full reimbursement to ALLSTATE.

C. OVERHEAD AND PROFIT

ALLSTATE's overhead and profit factor allowed on wind policy estimates of loss in the State of Louisiana was thirty one per cent (31%). However, on NFIP flood policy estimates, ALLSTATE allowed an overhead and profit factor of forty nine per cent (49%). Thus, if the true and correct overhead and profit factor was the thirty one per cent (31%) allocated by the defendant, ALLSTATE, to the estimates of loss for the wind policies it issued applicable to the same property for the same loss event, ALLSTATE caused the federal government to overpay ALLSTATE by a factor of eighteen per cent (18%) for every NFIP flood policy loss estimate adjusted and paid by ALLSTATE in the State of Louisiana and submitted to the federal government for reimbursement.

31. Relator is informed and believes, and thereon alleges, that there are hundreds of thousands of flood policy claims in Louisiana and in other states that likewise included a manipulation of the unit prices for flood versus wind damage loss estimates and alteration of overhead and profit percentages such that ALLSTATE engaged in the same duplicitous conduct against the Government in deliberately manipulating prices and charging higher unit prices on flood

policy claims than those charged on wind policy claims in other instances in Louisiana and other jurisdictions, including but not limited to the states of Florida, Mississippi, and Alabama.

32. Relator is informed and believes, and thereon alleges, that by increasing the unit prices for labor and materials and the overhead and profit factor on NFIP flood policy claims as hereinabove alleged, defendant, ALLSTATE, reduced the amount it was required to pay out of its own pockets to its insured claimants under the wind policy, allowing ALLSTATE to take the position with their insureds that they had already received the full value of the insured property, or that the flood damage had rendered the insured property a “total loss” under the NFIP flood policy and therefore nothing was required to be paid under the wind policy claim.

33. The federal government was ignorant of the fraud and overcharging carried out by defendant, ALLSTATE. Indeed, as noted in the “Highlights” section in the December 2007 Report, *supra*, (GAO-08-28, the United States Government Accountability Office Report to the Ranking Member, Committee on Financial Services, House of Representatives), at p. 1, the WYO Companies do not provide any information to the federal government about their practices, policies, procedures, adjusting processes and unit prices, thus preventing the federal government from detecting frauds such as the one perpetrated by defendant, ALLSTATE, as hereinabove alleged:

“NFIP does not systematically collect and analyze both wind and flood damage claims data, limiting FEMA’s ability to assess the accuracy of flood payments on hurricane-damaged properties. The claims data collected by NFIP through the WYO insurers – including those that sell and service both wind and flood policies on a property – do not include information on whether wind contributed to total damages or the extent of wind damage as determined by the WYO insurer. The lack of this data also limits the usefulness of FEMA’s quality assurance reinspection program to reevaluate the accuracy of payments. In addition, the aggregate claims data that state insurance regulators collectively gathered after Hurricanes Katrina and Rita were not intended to be used to assess wind and flood damage claims together on a property - or community - level basis. Further, FEMA program contractors do

not have access to WYO insurers' policies, procedures, and instructions that describe to adjusters how wind and flood damages are to be determined when properties are subject to both perils. FEMA officials stated that they did not have authority to collect wind damage claims data from insurers. But without the ability to examine claims adjustment information for both the wind and flood damages, NFIP cannot always determine the extent to which each peril contributed to total property damages and the accuracy of the claims paid for losses caused by flooding."

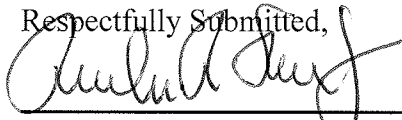
34. Relator is informed and believes, and thereon alleges, that the total overpayment fraudulently obtained from the federal government by ALLSTATE, on items such as drywall, paint, and overhead and profit contained in loss estimates prepared by ALLSTATE on NFIP flood policy commercial and residential claims in flood zones throughout the United States of America, and submitted by ALLSTATE to the federal government within the six (6) years prior to the date of filing of the within complaint (31 U.S.C. Sections 3731(b)(1), 3721(b)(2)), is in excess of one billion dollars (\$1,000,000,000).

WHEREFORE, Relator, on behalf of himself and the United States of America, demands judgment against defendant, ALLSTATE, as follows:

1. For judgment in the amount of three times the overcharges submitted by said defendant for payment to the United States Government;
2. For a civil penalty against the defendant in an amount between Five Thousand, Five Hundred Dollars (\$5,500.00) and Eleven Thousand Dollars (\$11,000.00) for each violation of 31 U.S.C. Section 3729, et seq.;
3. For the maximum amount allowed to the Qui Tam Relator under 31 U.S.C. Section 3730(d) of the False Claims Act or any other applicable provisions of law, including any alternate remedy provisions;

4. For Relator's court costs, expenses and reasonable attorney's fees at prevailing rates; and
5. For such other and further relief as the Court deems just and proper.

Dated this 10th day of December, 2009

Respectfully Submitted,


Hunter W. Lundy, Bar #8938
Matthew E. Lundy, Bar #18988
Rudie R. Soileau, Jr., Bar #2119
Lundy, Lundy, Soileau & South, LLP
501 Broad Street
Lake Charles, LA 70601
(337) 439-0707 Telephone
(337) 439-1029 Facsimile

Michael R. Davis
Hymel Davis & Peterson, LLC
10602 Coursey Blvd
Baton Rouge, LA 70816
(225) 298-8118 Telephone
(225) 298-8119 Facsimile

Craig Hill
215 West 6th Avenue
Oberlin, Louisiana 70655
(337) 639-2127 Telephone
(337) 639-2134 Facsimile