Consumer Federation of America

June 25, 2007

Dear Commissioner:

Re: Urge Prohibition of Anti-Concurrent-Causation Clauses in Insurance Policies

Most state insurance departments have allowed a clause to go into effect in homeowner's insurance policies that is so contrary to sound public policy and so dangerous to the citizens of your state that we call upon you to work to completely ban the use of the provision.

The provision is the so-called "Anti-Concurrent-Causation Clause." The purpose of the clause is to override coverage for an insured claim if, at or about the same time, an uncovered event also occurs. For example, in the wake of Hurricane Katrina, some insurers used the clause to refuse to pay for wind losses on homes that had also experienced flood damage, even if the flood occurred hours after the hurricane hit the home. Consumers cannot be expected to understand how this clause works and will always be shocked to learn that their coverage has been trumped by the occurrence of some other type of claim. Nor should consumers be subject to this sort loss in an insurance policy that is supposed to remove an insured risk. After all, risk taking is what consumers pay the highly profitable insurance industry for.

Here is an example of a typical ACC clause:

> We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the excluded event; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these:

Next, a typical ACC clause will list the events that will completely nullify the coverage that is offered in the policy. In the case of homes destroyed or damaged after Hurricane Katrina, the exclusion that mattered was the following:

> Water Damage, meaning:(1) flood, surface water, waves, tidal water, tsunami, seiche, overflow of a body of water, or spray from any of these, all whether driven by wind or not.

In other words, the insurance companies that use ACC clauses such as this are creating a trap door through which apparent coverage can disappear at great risk to the consumers buying their policies.

In the wake of Hurricane Katrina, a court in Mississippi ruled that the specific clause quoted above and put into effect by State Farm, was unlawfully ambiguous.[1] This is good news for homeowners who held State Farm policies in Mississippi, but it is likely that State Farm and other insurers will attempt to make the provision less ambiguous and continue to use it.

The problem is that the ACC clause is inherently ambiguous, no matter how clear the words are. No policyholder would believe that a trustworthy insurance company would construct a policy that was so deceptive and such a bad deal. It is not just coastal residents that should fear the ACC clause. One claims adjuster told me that after her roof blew off and rain poured into her home, her insurer said it would pay nothing under the ACC clause because some flood damage later occurred.

What is lurking to unexpectedly deny coverage to consumers in your state? Would a later flood override a claim for tornado damage? Would an earthquake that occurred at the same time as or after a fire destroyed a home negate coverage for fire losses? Would the discovery of mold or termite damage exclude wind or fire damage that occurred?

Surely it is terrible public policy to allow this sort of policy provision to exist, ticking like a time bomb, waiting to go off in the face of unsuspecting customers.

Insurance policies should either fully cover a peril or not cover it at all. No surprises should be built in. If a homeowners' insurance policy covers wind damage, it should cover it as stated in the policy at all times, period. If a policy has an exclusion, it should apply at all times. If losses occur for both a covered and non-covered peril at about the same time, insurers should do what they have done for many centuries: pay for the covered damage and not for losses that are not covered. To the extent there is some uncertainty about the cause of damage, insurers – as the risk takers--should pay for it.

Insurance is supposed to remove risk, not create risk. Insurance is supposed to bring certainty, not financial peril to the buyer.

It is time for you to act to remove the egregious ACC clause from the insurance policies of your state. Please let me know if I can help in this endeavor.

Yours Very Truly,

J. Robert Hunter

Director of Insurance

Consumer Federation of America

Travis B. Plunkett

Legislative Director

Consumer Federation of America

[1] Tuepker v. State Farm Fire and Casualty Co., 2006 WL 1442489 (S.D. Miss.). Judge Senter held that anti-concurrent causation language was contrary to the settled Mississippi law which looks to the proximate cause of loss to determine coverage, and was, therefore, invalid and unenforceable. Judge Senter also determined that the anti-concurrent causation language was ambiguous in the context of hurricane damage. He found that comparing the anti-concurrent causation language with the specific named peril coverage for wind created an ambiguity and, therefore, would not enforce the anti-concurrent causation language.