

In protracted insurance case, is Greg Abbott Farmers' friend or foe?

Posted: 5:21 p.m. Saturday, Aug. 2, 2014

By [Jonathan Tilove](#) - American-Statesman Staff

It was the summer of 2002 and it appeared that Democrat Tony Sanchez might be gaining traction in his campaign against Gov. Rick Perry by depicting the incumbent — who had received \$1 million in insurance company money in his political career — as incapable of reining in skyrocketing costs for homeowners insurance in Texas, which were the highest in the nation. But Perry fired back, attacking the insurance companies and ordering a state investigation that led then-state Attorney General John Cornyn, who was running for the U.S. Senate, to file suit that August against Farmers Insurance charging that it was raising rates and reducing coverage while poor-mouthing its actual profits.

That November, Perry trounced Sanchez, and by December 2002, Farmers and the state had agreed to a tentative settlement, including refunds and rate reductions, that was, at the time, described as the largest property insurance agreement in Texas history.



+ Farmers Insurance Group spokesmen Mark Toohey, left, and James Snikeris, executive director of the Austin Service Center, announce in November 2002 that Farmers reached an agreement with the Texas Department of Insurance and the attorney general.

A dozen summers later, the Farmers settlement is still pending with no resolution in sight, and Texas Democrats are hoping they can reprise the issue, this time against Republican gubernatorial candidate Greg Abbott, who was elected attorney general in 2002, succeeding Cornyn and inheriting stewardship of the Farmers case. The Democratic line of attack: Even as Farmers policyholders are still waiting on refunds from a settlement that critics say let Farmers off easy, Abbott has, since 2002, collected more than half a million dollars in political contributions from Farmers, its lawyers and lobbyists.

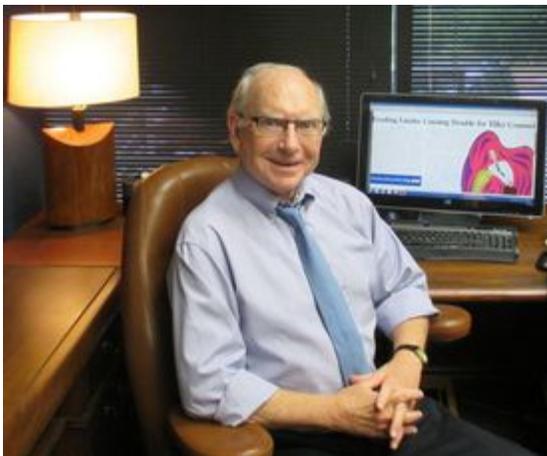
“It’s classic Abbott, advocating for corporate interests within very complicated litigation. In a literal sense, he’s their guy on the inside,” said Matt Angle, the head of the Lone Star Project and a top strategist for Abbott’s Democratic rival, state Sen. Wendy Davis. “If you’re a corporate wrongdoer in Texas and you’re going to get sued, you want Greg Abbott to sue you because you know he’s going to go easy on you.”

The Abbott campaign says that the Farmers case is yet another instance where the attorney general has proved he can ably represent the state even when it means going up against those who have contributed to him.

The settlement has been priced at \$117.5 million, but \$40 million of that was long ago distributed as part of a temporary rate reduction, which was quickly followed by rate hikes, according to the filing of an intervenor, Michael Woods, a Farmers agent from San Antonio. Hundreds of thousands of Texans who had homeowners policies with Farmers, the third-largest home insurer in the state, between 2000 and 2003, would be eligible for refunds and credits, mostly for less than \$100.

Farmers, based in Los Angeles, is one of the nation’s largest insurers of automobiles, homes and small businesses.

Joe Longley



+ Austin attorney Joe Longley has appealed and intervened on behalf of Farmers policyholders. The attorney general’s office and Farmers blame him for delays in the case.

Both the attorney general’s office and Farmers stand by the settlement they’ve agreed to. Both also blame the long, drawn-out process mostly on Joe Longley, an Austin plaintiff’s attorney who, in 1973, at the age of 29, was named by Attorney General John Hill, a Democrat, as the first chief of the office’s Antitrust and Consumer Division, where he wrote the Deceptive Trade Practices Act under which Cornyn sued Farmers. Since the outset of the Farmers case, Longley — he has assumed the title, “the No. 1 enemy of the fine print” — has been appealing and

intervening on behalf of Farmers' policyholders who he contends haven't been well served by Abbott's office.

Longley's most recent intervention came on the eve of an April 29 hearing before Travis County District Judge Scott Jenkins at which lawyers for the state and Farmers thought they might at long last seal the deal.

"This was a case brought by the Texas Department of Insurance and was settled by the Texas Department of Insurance back in 2002," said Jerry Strickland, the spokesman for the attorney general's office. "This is really their case. We are simply their lawyers."

"In terms of the timeline, if Farmers' customers are unhappy about not getting the money that is due to them for so many years, they really can look no further than Joe Longley," Strickland said. "Really on three occasions along the way, Joe Longley has delayed this case, including raising new claims the night before the agreement was to have been finalized by a judge."

In a statement, Texas Department of Insurance Commissioner Julia Rathgeber said, "Since the Attorney General filed the suit for TDI in 2002, it has been a top priority to get Texas policyholders paid and paid quickly. The Attorney General's Office has done an outstanding job for the state. This settlement was approved more than 11 years ago, but unfortunately third-party lawyers decided to delay policyholder relief."

Farmers, represented by the firm of Fulbright & Jaworski, is seeking to have Longley, representing Charles "Chuck" Grigson, a policyholder and Austin attorney, removed as an intervenor.

But Longley said that it was at Farmers' insistence — and with the state's agreement — that the case was made into a class action, which opened the door for policyholders to intervene. Absent that intervention, he said, the flaws in the settlement would never have been brought to light.

"There has not been one policyholder in 12 years who has said they support this settlement," Longley said.

The effort to remove Longley and other intervenors will be the subject of a Sept. 4 hearing before Jenkins.

Scott Jenkins

But whatever happens then, it already became clear at the April hearing that Jenkins, who has been overseeing the case from the start, had fresh misgivings about whether the settlement did right by consumers and whether the attorney general's office had acted aggressively enough in protecting their interests.

When Jenkins granted preliminary approval of the original settlement 11 years ago, he ruled that there was no collusion between the state and the insurance giant — one of Longley’s claims — and that the settlement was fair. In a statement at the time, Abbott agreed: “The agreement holds Farmers Insurance accountable for what the state saw as deceptive and unjust practices. Consumers can take comfort in knowing that the court has carefully scrutinized this landmark settlement and found that it is truly in their best interest.”

That settlement was scuttled by an appeal brought by Longley and other lawyers representing policyholders, which went to the Texas Supreme Court, occupying six years. There was further delay as the parties waited to let separate national class action suits against Farmers, in California and Oklahoma, play out. But last August, the lawyers for Farmers and the state filed a new motion for preliminary approval of an amended settlement.

That was what brought them to Jenkins’ courtroom in April, where the judge quickly dashed their optimism.

“I’m already unprepared to approve it, if that makes anybody feel better, before Mr. Longley ever intervened,” said Jenkins, a Democrat. “So I can see the look of consternation on your faces already, but, you know, I’ve studied it all.”

For starters, Jenkins said he couldn’t approve a settlement that didn’t require Farmers to add interest to the long-deferred payout.

“Without any calculation for the time value of money, since Farmers has had the benefit of all that money for more than a decade and the consumers haven’t, it’s not within the range of something I think I could approve,” Jenkins said.

The judge asked the state’s lawyers why they hadn’t pressed for that.

“You don’t have to just lay down to Farmers,” Jenkins said at one point. “Why are we being deferential to Farmers?” he asked at another.

Deputy Attorney General David Mattax answered that, in his view, once you strike a deal after an adversarial negotiation, it is reasonable to stick to it.

“To agree to go forward with the deal you made to me is not collusion,” he said. “You make a deal, that’s the deal that was done.”

‘Fundamentally unfair’

Jenkins also was intrigued by the argument, made both by Longley and Woods, the Farmers agent from San Antonio, that there is an inherent conflict in Fulbright & Jaworski representing both the Farmers Insurance exchanges, which are owned by the policyholders, and FGI, the

corporate entity, which is owned by a Swiss company, Zurich Financial Services. FGI provides certain administrative services for the exchanges and reaps the management fees that Cornyn in his original suit said were the source of enormous corporate profits even as the exchanges in Texas were losing money.

Longley and Woods contend that Fulbright & Jaworski are really serving one client — FGI — at the expense of the other — the three Farmers exchanges. The result is that, under the terms of the settlement, the financial burden falls entirely on the exchanges, the reverse of the outcome in the California case, in which FGI and the exchanges had different legal representation, and FGI ended up bearing the full cost of that \$455 million settlement.

“It is fundamentally unfair” for the exchanges, comprising the policyholders themselves, to pay for the wrongdoing of FGI, said Alex Winslow, executive director of the citizen advocacy group Texas Watch.

“It just doesn’t make sense that I have to pay myself for something somebody else did,” Winslow said.

“I don’t have enough of a recollection to be confident going forward that I can approve the settlement given this issue that I’m now discerning about the potential for unfairness to the exchanges vis-a-vis the corporation,” Jenkins said.

In other words, the end is not near.

Farmers spokesman Trent Frager said last week, “Farmers Insurance is committed to obtaining final approval on a settlement that was initially reached with the state of Texas more than 10 years ago, and we look forward to continuing discussions with the court and completing this process to deliver an outcome that is fair and equitable to all parties.”

“It’s really unacceptable that it takes 11 or 12 years to get a rate case disposed of,” said state Rep. John Smithee, the Amarillo Republican who chairs the House Insurance Committee. “Many of the ratepayers who were involved at the time have moved out of the state, others have passed away.”

“Having said that, I can’t really put the blame on anybody in particular,” said Smithee. There are competing interests, each with their right to their day in court, he said.

“It’s hard to fault the current attorney general for the terms of the settlement. He wasn’t even in office then. It wasn’t his settlement,” Smithee said.

Smithee said that in 2002 state officials also had to weigh Farmers’ threat to leave Texas.

“A lot of companies are reluctant to write homeowners policies in Texas, we have such extreme weather – hail, hurricanes, tornadoes,” Smithee said. “It’s never been seen as a real lucrative market.”

Big donors

Abbott’s relationship with Farmers was an issue in his 2002 race for attorney general against state Sen. Kirk Watson.

Farmers, then in the thick of controversy, was among the hosts of an Abbott fundraiser in May of that year. When Abbott was asked whether that posed a conflict, he said he was unaware that Farmers was under investigation by the state. He refunded \$2,500 the Farmers Employee and Agent PAC had given him.

For a couple of years after that, the Farmers PAC didn’t donate to Abbott’s campaigns. But since 2005 it has been a regular donor, contributing a total of \$127,500, including its biggest single gift of \$50,000 in December.

HillCo Partners, the Austin lobbying firm that represents Farmers and other clients, has given Abbott \$232,719 since 2002, while Fulbright & Jaworski, which represents other clients with business before the state, has made donations totaling \$314,207 over that same period.

Longley has contributed \$3,500 to Wendy Davis since 2010. Not a whole lot, but his fellow trial lawyers have given Davis \$3.4 million since 2013 in contributions of \$2,500 or more, according to a tally by the Texans for Lawsuit Reform PAC, a major Abbott backer.

From the beginning, Farmers — which admits no wrongdoing and paid no penalties or fines in the proposed settlement — has depicted the case against it as politically motivated, forged in the crucible of a heated gubernatorial campaign.

“The political headlines were bashing us daily,” Richard Carrell of Fulbright & Jaworski recalled at the April hearing. “There was an issue of whether or not we would remain writers of insurance in this state or not. Things were moving on a number of different areas.”

Carrell was explaining why Farmers ought not have to pay interest. It was ready to pay a long time ago — it already had reduced rates to the tune of \$40 million — and, he said, it had settled high and now inhabited a different world.

“The different world, your honor, is that Farmers is no longer under the extreme pressure that we felt 10 years ago,” Carrell told Jenkins. “So if anything, a settlement of this magnitude that we’re still willing to stand by today is in fact more generous than the circumstances today would

require if we were to renegotiate this. So we are still prepared to pay fully as if we were still under the gun, so to speak.”

Or, as HillCo’s Neal “Buddy” Jones, speaking for Farmers, told the American-Statesman back in 2003, when a final settlement appeared at hand, “This wasn’t a sweetheart deal. Farmers got hosed.”

Austinite Glenn Smith — who managed Tony Sanchez’s campaign in 2002 and is advising Davis’ 2014 campaign — agrees that somebody got hosed, but it was not, in his view, Farmers.

Sure Perry, back in the 2002, publicly bucked his business benefactors.

But, Smith said, “It was a pretty easy pivot for Perry, and the insurance companies knew that he was winking at them at the same time — ‘I got to do this for political reasons.’ And sure enough, it hasn’t cost the insurance company a penny. They kind of knew at the time that it was a political bluff, and Perry and Abbott have carried out that bluff.”

Campaign contributions since 2002 to attorney general and Republican gubernatorial candidate Greg Abbott from Farmers Employee and Agent PAC of Texas; HillCo PAC, Farmers’ lobbyists; and Fulbright & Jaworski LLP Texas Committee, Farmers’ law firm.

Farmers Employee and Agent PAC: \$127,500

Dec. 7, 2005: \$5,000

July 17, 2006: \$5,000

Dec. 6, 2006: \$5,000

Dec. 9, 2008: \$5,000

Oct. 29, 2009: \$10,000

Dec. 20, 2011: \$10,000

Oct. 10, 2012: \$10,000

June 28, 2013: \$25,000

Nov. 13, 2013: \$2,500

Dec. 6, 2013: \$50,000

HillCo PAC: \$232,720

Dec. 12, 2002: \$20,000

Sept. 26, 2003: \$5,000
Aug. 27, 2004: \$ 10,000
Sept. 28, 2005: \$10,000
Nov. 2, 2005: \$5,000
June 14, 2006: \$10,000
Nov. 2, 2006: \$10,000
Dec. 8, 2006: \$10,000
Dec. 8, 2006: \$220
June 29, 2007: \$5,000
March 31, 2008: \$2,500
Dec. 9, 2008: \$10,000
Sept. 23, 2010: \$5,000
June 30, 2011: \$25,000
Oct. 10, 2012: \$5,000
Nov. 16, 2012: \$25,000
Dec. 6, 2012: \$10,000
June 28, 2013: \$30,000
Dec. 6, 2013 / \$10,000
April 23, 2014 / \$25,000

Fulbright & Jaworski LLP Texas Committee: \$314,207

June 3, 2002: \$1,000
June 5, 2002: \$25,000
Dec. 9, 2002: \$5,000
July 31, 2003: \$25,000
March 17, 2004: \$1,000
Nov. 22, 2004: \$25,000
Aug. 22, 2005: \$25,000

June 23, 2006: \$1,000

Oct. 13, 2006: \$25,000

June 26, 2007: \$25,000

June 27, 2008: \$25,000

Dec. 4, 2009: \$25,000

June 30, 2011: \$25,000

Aug. 17, 2011: \$1,570

Aug. 17, 2011: \$1,235

Jan. 20, 2012: \$1,349

March 5, 2012: \$2,053

June 12, 2012: \$25,000

June 24, 2013: \$25,000

April 24, 2014: \$ 25,000

Expert coverage

Jonathan Tilove is the American-Statesman's chief political correspondent. He is closely covering the Texas gubernatorial race and has written about campaign contributions to both candidates.