

# California

LOS ANGELES DAILY JOURNAL • WEDNESDAY, MARCH 19, 2008 • PAGE 3

## Panel Revives Policyholders' Suit

By Laura Ernde  
Daily Journal Staff Writer

A state appellate court on Tuesday resurrected a class action against an insurance company accused of overcharging its policyholders by billions of dollars.

The 2nd District Court of Appeal said Farmers Group Inc. members can sue in Los Angeles County Superior Court even though the state insurance commissioner approved the disputed rates. *Fogel v. Farmers Group Inc.*, 2008 DJDAR 3734. (Cal. App. 2nd Dist. March 18, 2008).

"The bottom line is this is another court that has rejected an effort by insurance companies to evade accountability for overcharges," said Harvey Rosenfeld, founder of the Santa Monica-based Foundation for Taxpayer and Consumer Rights.

The way Farmers and a handful of other insurance companies are structured, members are also considered owners of the company. A portion of the insurance premiums

are set aside to cover management fees.

A lawsuit filed in 2003 claims that Farmers has been charging billions of dollars in management fees to its members since 1999 while reporting profits of as much as 56 percent.

"We believe that's excessive when they owe a fiduciary duty to charge only reasonable fees," said Philip K. Maxwell, an Austin attorney who represents the plaintiffs.

Raoul D. Kennedy in the San Francisco office of Skadden, Arps, Slate, Meagher & Flom, who represents Farmers, could not be reached for comment Tuesday.

Los Angeles County Superior Court Judge Peter D. Lichtman sided with Farmers. He ruled that, because the fees were a component of the rate approved by the insurance commissioner, the lawsuit was barred.

But a three-judge panel of the appellate court led by Justice Thomas L. Willhite Jr. overturned the decision.

Rosenfeld said insurance companies have tried to use Proposition 103, a 1988 voter initiative that required the insurance commissioner to approve all rates, to limit exposure to lawsuits.

The insurance companies were successful in *Walker v. Allstate Indemnity Co.*, 77 Cal.App.4th 750 (2000).

But Tuesday's ruling marked the second time in four years that an appellate court has sided with consumers, he said. The other case was *Donabedian v. Mercury Insurance Co.*, 116 Cal.App.4th 968 (2004).

Maxwell, who specializes in insurance litigation, said he learned about Farmers' practices because of similar claims made in Texas. The Texas attorney general has proposed a settlement in that case, but Maxwell has objected, and the case is on appeal.

Maxwell is working with the California firms of Girardi & Keese and Engstrom, Lipscomb & Lack.