

NEWS

The 'Mold Queen' Fights Back

The woman the insurance companies love to hate says they ain't seen nothin' yet

BY JORDAN SMITH, FRI., MARCH 21, 2003

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Among the many high-profile combatants in the Texas homeowners-insurance wars, Melinda Ballard seems an unlikely consumer advocate. In 2001, the former advertising executive won a \$32 million judgment against Farmers Insurance, a controversial courtroom victory that propelled her into the public spotlight. Skeptics unfamiliar with the details of her case dismissed the judgment as the outrageous folly of a gullible jury, and the insurance industry has since used the award as high-powered ammunition in its endless battle against "frivolous lawsuits." Fewer people are aware that on Dec. 19, the Texas 3rd Court of Appeals reduced Ballard's award to just over \$4 million in actual damages, and on Feb. 26 refused Ballard's request for a rehearing, sending the plaintiff and her case to the Texas Supreme Court, where it awaits review.

Rather than take the money and run, Ballard has refused to be cowed by her deep-pocketed opponents, and has returned every insult and attack with one of her own. Moreover, she has expanded her personal battle into a campaign on behalf of consumers like herself -- homeowners who say they have been used and abused by big insurance companies and who refuse to take it any more. And though her former home has been reduced to a crumbling ruin, Ballard remains proudly defiant and convinced that her cause is just. "I can't be bought. It's like bumping up against Ross Perot; he can't be bought and he'll always say what's on his mind," she says. Farmers "could've saved themselves a lot of trouble in the past and in the future, because I am going to get my pound of flesh out of this."

In her 1999 suit, Ballard alleged that Farmers committed fraud and bad faith in handling what had initially



Melinda Ballard in front of her 12,000-square-foot replica of Tara, the Gone With the Wind mansion, in Dripping Springs. The house is now completely uninhabitable, destroyed by mold. (Photo By Jana Birchum)

been a simple water-damage claim in her home, and that the company stalled so long in "investigating" that claim that eventually the potentially toxic black mold *Stachybotrys* took hold and began to devour her 12,000-square-foot Dripping Springs mansion. The mold and the consequent legal battle have left Ballard's former home -- a replica of Tara, the famed plantation mansion in *Gone With the Wind* -- moldering, decrepit, and even less habitable than its fictional counterpart after the burning of Atlanta. But her legal battle with Farmers propelled Ballard into the center ring of a political combat, where she has taken up a new and quite formidable residence.

During last fall's election campaign, the Texas Association of Business BACPAC -- supporters of incumbent state Rep. Rick Green, R-Dripping Springs -- attacked Ballard personally in campaign mailers, dubbing her "the Mold Queen" for her high-profile, big-money legal victory over Farmers. The tactic apparently backfired, and may have contributed to Green's eventual loss in a very close race to Democrat Patrick Rose. More embarrassingly for Green, the personal attack on Ballard led to the revelation that Green himself had filed a mold-related claim on his own home -- during the remediation, Green's insurance company housed the rep and his family at Austin's Downtown Omni Hotel (see "Pssst. Rick Green Has Some Moldy Little Secrets," Nov. 1, 2002).

The story became public because, according to Ballard, Green had privately consulted her on the potential health effects of mold infestation and told friends that his family had suffered health problems. That was in June of 2001, long before his campaign's late-hour assault on her integrity. Ballard says she told Green that he was lucky to get such nice treatment from his insurer since his claim was based on a construction defect that never should've been covered by his homeowners' insurance in the first place. "The bottom line," concludes Ballard, "is that he is a hypocrite, and that shit don't fly." Green has never confirmed nor denied that he filed a water damage or mold claim or consulted Ballard, and at press time, he had not returned several calls requesting comment.

The day after the election, Nov. 6, 2002, Ballard again filed suit against Farmers and its spokesman, Austin political consultant Bill Miller (then a member of new House Speaker Tom Craddick's transition team). The suit charges that Miller, as a public relations consultant to Farmers, libeled Ballard in commenting on the 2001 judgment, telling reporters that Ballard was "whipping up public hysteria" about mold-related insurance claims to advance her own interests, and that her initial suit against Farmers was "fraudulent." The libel suit is pending in state district court. Ballard says she will donate any money she may be awarded to form an "independent and voluntary" board within the Texas Dept. of Insurance that would hear homeowners' complaints against insurers.

The judgment in Ballard's landmark suit couldn't have come at a more inopportune time for the insurance industry, and for Farmers in particular. The number of claims arising from mold damage had been skyrocketing across the state, from just 12 in 1999 to 15,000 in 2001 -- an increase due at least in part to Hurricane Allison's battering the Texas coast in mid-2001. During the same period, insurance rates leapt as well; some homeowners renewing policies in 2001 and 2002 saw their premiums go up nearly 200%. The industry insists there is a direct cause-and-effect relationship between the rise in mold claims and increasing premiums. Consumer advocates counter that the industry is using the mold issue as a cover for raising rates,

reducing coverage, and decreasing their overall liability for claims. Ballard is not alone in believing that the real reason homeowners are paying more for less is to cover the bad investments that the firms made with their customers' premium dollars. "They are supposed to be good stewards of the premium dollars," she says. "That's what they are selling: fiduciary trust. Well, now they've completely boogered that up."

In August of last year, the matter was becoming an issue in the gubernatorial campaign when Attorney General John Cornyn announced a lawsuit against Farmers for a host of infractions, including overcharging its customers to the tune of nearly \$140 million. Cornyn and Gov. Rick Perry said they were acting in the best interests of Texas homeowners, while their Democratic opponents dismissed the lawsuit as campaign posturing. A month later, Farmers announced that it would pull out of the Texas homeowners business altogether and abandon 700,000 customers statewide. The dispute would not



Mold fills a window of Ballard's Dripping Springs mansion. (Photo By Jana Birchum)

be settled until shortly after the election, when the state dropped its lawsuit in return for millions in projected rebates to customers. Consumer advocates raised eyebrows at the state's abrupt, post-election settlement, and a class-action lawsuit has been filed against it, with the initial aim of questioning Texas Insurance Commissioner José Montemayor and Farmers representatives concerning the content and terms of the settlement negotiations. On Jan. 6, District Judge Scott Jenkins ruled that attorneys for the policyholders would be allowed to question Montemayor and the Farmers reps. At press time, the hearing had not yet been scheduled.

Amid all the headlines, for the insurance industry and its political allies, Melinda Ballard and her \$32 million judgment had become the useful symbol of everything wrong with government regulation and the civil justice system. At the same time, Ballard's prominence and her increasingly visible take-no-shit attitude galvanized other homeowners -- not only in Texas. Ballard had begun amassing a database of homeowners wrestling with their insurance companies over "simple water damage claims." The first 16,000 families would become the initial membership of "Policyholders of America," the consumer advocate group and Web-based homeowner's insurance information clearinghouse Ballard founded.

The POA site went online in March of 2002, and the group's membership has exploded, as of December, to over 503,000 members nationwide -- nearly 200,000 of them in Texas. "Basically there was one common thread," Ballard says. All the members "were homeowners and they all wanted just one thing -- and that was to get their homes repaired." Ballard's life is now dominated by insurance issues. She says she sleeps just three hours a night, and responds to more than 2,000 e-mails per day from homeowners struggling to understand their insurance dilemmas. "When someone jacks with me, I'm not going to lie down and take the screwing," she says. "I'm the first person to tell someone they're a jerk. If you want things colored with diplomacy, you probably don't want me on your team -- and that has made me a 'mean, wicked bitch,'" in the

eyes of the insurance industry. "If telling the truth makes me a mean, wicked bitch, I'll gladly wear that label."

Ballard also insists that, despite the public impression broadcast by the industry, her battle against Farmers was never primarily about mold -- nor is that the focus of POA. The fight is much more fundamental, she says. Homeowners "are paying more [for less coverage, and we can't get insurance."

Ballard says she's fully aware that her own situation is unusual, and that her personal financial independence has enabled her to launch a consumer crusade against an enormously powerful and politically connected industry. "Some broke dick couldn't do [this]," she says. "I hate to say it, but it's true. Rich people with a social conscience need to [help] set laws for all people. It is a social mandate that I do this."

From Bad to Worse

Ballard's legal odyssey began in mid-1998, when she had a bathroom plumbing leak repaired. According to the court record, shortly after the repair, her home's hardwood floors began buckling. Ballard's floor contractor, Richard Roberts, first advised her to remove several of the boards to allow the floor to dry out. But the problem persisted, and in December 1998, Roberts advised Ballard to contact her insurer, since the floor damage appeared to be "extensive" and moisture readings suggested it was not drying out. Ballard filed a claim with Farmers in mid-December.

Ballard's version of the following events was upheld in court, but remains under dispute by the insurance company.

According to Ballard's legal pleadings, a Farmers claims adjuster initially diagnosed the problem as "slab settling" -- not covered by Ballard's homeowner's policy -- and the company tested her plumbing for leaks, at first concluding there were none. A month later, a Farmer's engineer and a second adjuster told Ballard that the damages had in fact been caused by two separate water leaks, but added that there were no *active* leaks in the house. According to Ballard, Roberts told the adjuster he was increasingly concerned about the potential for mold growth if the hardwoods and sub-flooring were not removed.

Ballard asked Farmers for permission to remove the flooring, as a temporary repair and to mitigate the damages. Farmers rejected that request, directing instead that she remove only those boards with the most severe damage and cover the sub-flooring with plywood and carpet remnants while the claim investigation proceeded. "The policies say that the homeowner has the duty to mitigate damages. On the other [hand], it says that the homeowner must cooperate and agree to what the insurance company wants to do," recalls Ballard. "When I filed the claim ... Farmers came out to adjust and said, you need to fix this. But then they say, we're not finished with our investigation and if you make repairs you'll lose your coverage. This is the dumb-ass theory of adjusting."

On Feb. 24, 1999 -- more than two months after Ballard's initial claim -- Farmers offered to settle, for \$108,000. Unfortunately, that sum was no longer sufficient to repair the floors -- not to mention the cracked windows, door frames, stairs, and buckling walls that had occurred in the meantime, while the company's investigation was in progress. "If they had allowed me to pull up the floor," Ballard says now, "my house

would not be sitting there abandoned today."

And it didn't end with the damage to the house. While Farmers was still investigating, Ballard, her husband Ron Allison, and their son Reese each began experiencing flu-like symptoms, and shortly thereafter, the family discovered black mold growing on the walls. Ballard hired air quality experts, who determined the house was contaminated with various fungi, including the toxic mold *Stachybotrys*. Ballard and the air quality analysts expressed to Farmers their concerns about the safety of the house. The insurer continued to investigate.



Ballard examines some of the damage done to her home by mold. (Photo By Jana Birchum)

"So now I've got a 12,000-square-foot home," Ballard recalls, "with 10,000 square feet of *Stachybotrys*."

In June 2000, Ballard and her family finally moved out of the house. Allison, 36, has since been diagnosed with "toxic encephalopathy," Ballard says -- a form of brain damage, apparently due to mycotoxin poisoning -- presumably emitted by the *Stachybotrys*. Formerly a financial adviser, he has been unable to work, suffers from seizures, and is now enrolled at Austin Community College, Ballard says, trying to "retrain" himself to think properly. His professors "are pretty understanding."

Ultimately, just before the family was forced from the home, an appraiser retained by Farmers conceded that the damage to Ballard's home was far greater than the company had acknowledged. The appraiser concluded that the house, to be properly remediated, would likely have to be torn down and rebuilt. Since all work has been suspended during the legal actions, the structure continues to deteriorate, and is now a crumbling ruin.

Real Money

Late last year, standing outside the rented West Lake Hills-area home where she and her family have been living since fleeing their toxic Tara, chatting on her cell phone and smoking a cigarette, Melinda Ballard was cautiously optimistic about the upcoming legislative session -- and ready for a fight. "It's going to be a very spirited session," she said. "It's going to be a bloodbath for some, and we're going to do everything we can to make sure it's not the blood of the public. I'm ready to play some serious hardball. They do it, so why shouldn't we?"

Three months later, Ballard's optimism has clouded. Dramatic overall budget cuts, the appointments of insurance industry insiders to influential positions -- such as Miller's appointment to Craddick's transition team and industry lobbyist Mike Toomey as the governor's chief of staff -- and the frank legislative pandering to the corporate agenda are combining to make any real progress for consumers appear much less likely.

"Politicians have lost the vision that what people really want is responsibility for everyone -- not just for the people who are campaign donors," she says. "This is logical -- but when you throw in the special interest

stuff, it gets lost."

There is plenty of special interest money to go around. According to Dietrich Knabe of the nonprofit Campaigns for People, since June 1999 the insurance industry has donated more than \$2 million in *disclosed* contributions to Texas state campaigns -- more than \$1.3 million just during the 2002 election cycle, including more than \$250,000 in "late-train" contributions, donated to winning candidates after the last election reporting period but before the start of the legislative session contribution ban. That does not include independently funded (and undisclosed) "educational" spending not directly coordinated with particular candidates, nor does it include donations from individual donors who may be employed by insurers. It's apparent that the industry has spent even more in that unregulated market, and it is now engaged in a PR blitz -- embodied in the recent formation of the Texas Coalition for Affordable Insurance Solutions, an industry lobbying group also underwriting a saturation media campaign. According to a report released by CFP in October 2002, insurers expect to spend another \$6 to \$10 million in lobbying fees for the 2003 legislative session. "The purported financial losses of homeowners' insurance companies," the report notes, "have not kept them from giving big money to legislative candidates and lobbyists."

Against that kind of cumulative financial power, poured out in just a single legislative cycle, the "Mold Queen's" \$4 million remnant seems paltry indeed.

Yet, although the deck is stacked against her and other likeminded reformers, Ballard intends to fight on. "It is not wise to offend us," says Ballard, whose father is a former executive with Prudential Insurance's real estate division. "We have beaucoups of votes, and the lion's share of those votes are Republican." In her overall opinion of the Legislature and its new leadership, Ballard minces few words. "Make no mistake, LaGrange is no longer home to the Best Little Whorehouse in Texas. It's right there on Congress Avenue -- and that's the truth." ■

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