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Santa Clara takes cue from Spitzer

County pushing suit alleging misdeeds in insurance industry

By Julie O'Shea
RECORDER STAFF WRITER

SAN JOSE — Following New York's lead, Santa Clara County is suing several top insurance brokerage firms, claiming they have duped customers out of millions through secret "kickbacks" and other "lucrative" service deals.

"It's almost cartel-like," said the county's outside counsel, Louise Renne, a former San Francisco city attorney who was brought on board because of her extensive experience with this type of litigation. "We believe that every public agency in the state of California has been affected."

In a complaint filed in Alameda County Superior Court in November, Santa Clara is alleging that industry giants Marsh & McLennan Cos., Driver Alliant Insurance Service and Keenan & Associates are "steering" clients toward insurers that are offering brokers undisclosed commissions, funded through insurance premiums.

"In the end," the complaint alleges, "clients paid more for less insurance, with defendants siphoning off the difference to pad their bottom line."

But Santa Clara faces obstacles, including an adverse ruling in Alameda County this summer that the state Supreme Court declined to review Wednesday.

The county's allegations came just a few weeks after New York Attorney General Eliot Spitzer sued Marsh & McLennan for alleged price-fixing and bid-rigging. In January, Marsh & McLennan settled for $850 million. And last week, eight of the company's former executives were indicted on felony charges.

BUILDING HER CASE: Louise Renne, Santa Clara County's outside counsel, says she's been looking into the practices of three insurance brokerage companies for more than a year.

RECORDER FILE (1999)

"After the cases were filed with the attorney general in New York, there was some concern that we could have a similar problem," Santa Clara County Counsel Ann Ravel said. "I think it's important that these issues are addressed."

The county spent $8 million last year on insurance, but it doesn't know how much of that went toward commissions received by the brokers, according to the lawsuit.

"There is no way that a public agency could know," because the commissions were never disclosed to the clients, said Renne, a partner with San Francisco's Renne Sloan Holtzman Sakai who has

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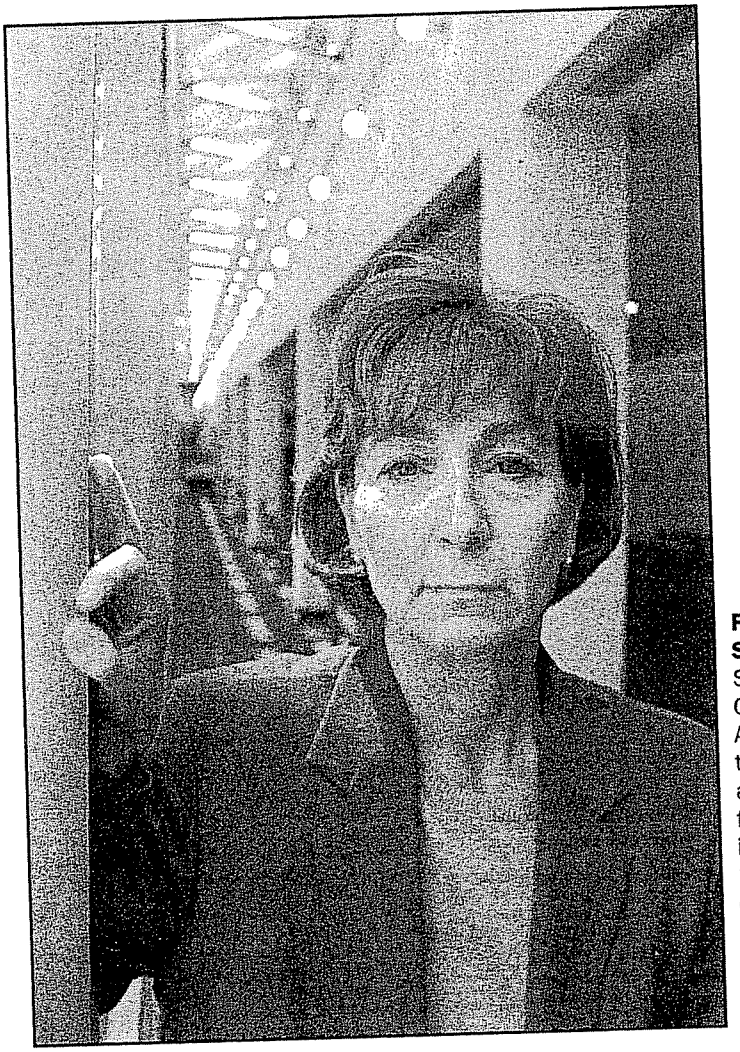

FINDING THE SIMILARITIES: Santa Clara County Counsel Ann Ravel says that after hearing about the cases filed with the AG in New York, "There was some concern that we could have a similar problem."

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INSURANCE

County ruling was "problematic," but be-

Continued from page 1

been looking into this matter for more than a year.

"That's the key. If [brokers] don't tell their clients, how do their clients know they are getting the best possible deal? What else is going on?" Renne asked.

The suit demands that brokers stop their "unethical and deceptive business behavior," disclose any and all kickbacks they received from insurers and pay back money wrongfully taken through "false advertising and unfair business practices."

Attorneys for the brokerage firms were quick to denounce claims in the Santa Clara County suit and expressed confidence they would win at a jury trial.

Alan Kossoff, a partner with Greenberg Glusker Fields Claman Machtinger & Kinsella, which is representing Keenan in the suit, thinks Santa Clara is "jumping on Eliot Spitzer's investigation in New York."

The county's claims, Kossoff said, are "devoid of facts and devoid of law."

Cheryl Orr of Musick, Peeler & Garrett, which is representing Driver Alliant, also said the suit "lacks merit," but declined to answer any questions regarding the case.

A lawyer for Marsh did not return a call seeking comment. However, one Marsh executive was quoted in the New York complaint as saying that the size of the commissions received by the firm determined "who [we] are steering business to and who [we're] steering business from."

The litigation has already hit a snag. In June, Alameda County Superior Court Judge Steven Brick ruled in *Santa Clara County v. Driver Alliant Insurance Services*, that Santa Clara cannot sue for unfair business practice because it is a municipality, not an individual.

The ruling threw a wrench in the county's suit. Renne filed a petition for writ of mandate in July at the First District Court of Appeal, which was rejected. Then she asked the state Supreme Court to review the case, S136316, which it declined to do Wednesday.

"This has been an ugly, ugly, contested case," said Renne. "We are talking about millions and millions of dollars. ... This is a big taxpayer issue."

Ravel acknowledged that the Alameda County ruling was "problematic," but believes the county still has a good chance of prevailing.

"We think we have a strong case," she said. "We have to see what the discovery brings."

The suit — brought on behalf of the people of California — also alleges false and misleading advertising and a breach of fiduciary duty.

Shortly after New York started its investigation, California Insurance Commissioner John Garamendi and Attorney General Bill Lockyer launched separate probes into possible antitrust violations and fraud by brokerage firms.

Attorneys general have special powers above and beyond local governments, which give them "authority to sue in a lawsuit like this," Renne said.

"Judge Brick's ruling does not affect the state attorney," Renne said, noting why Spitzer was successful in New York.

Lockyer's office opened an investigation into alleged broker bid-rigging in October. And Garamendi's office hired Lerach Coughlin Stoia Geller Rudman & Robbins to look into alleged kickback deals brokers made with insurers.

Gary Cohen, the Department of Insurance's general counsel, said he thinks "everyone has been very shocked" by what's come out so far.

Last fall, Driver Alliant, one of the named defendants in the case, admitted to taking a $343,415 commission, according to a Dec. 2 memo from the CEO of the California Public Entity Insurance Authority.

Kossoff, on the other hand, maintains that Keenan has done nothing wrong and doesn't understand why the firm is named in the suit, given that Santa Clara isn't even one of the broker's clients.

That may be true, said Renne, but Keenan is used by the San Francisco Unified School District, which joined the suit earlier this year. The San Francisco Community College District and the Joint Powers Authority for Tuolumne County have also joined the Santa Clara County suit.

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