



Southwestern Insurance Information Service

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Some insurance companies may be shorting Texas homeowners

Consumers and experts say some payouts to customers should be as much as 20 percent larger

HOUSTON --Three new proposed class action lawsuits in Texas allege insurance companies are shorting their consumers. The lawsuits say as much as 20 percent is often missing from what their homeowners insurance should provide in a pay out.

The allegations center around the alleged non-payment of something the insurance industry refers to as “overhead and profit” to consumers, which is money insurance companies pay so consumers can afford to hire a professional general contractor when needed to oversee repairs. The money is supposed to provide enough funds to pay for a general contractor’s overhead expenses such as licensing and bonding fees, and also enough to allow the general contractor to make a living.

The Texas Department of Insurance has issued two separate bulletins informing insurance companies that not paying overhead and profit where a general contractor is needed would be “unfair to the insureds,” and could subject the insurance company to possible disciplinary action.

Cheryl Guerra says she’s one of the homeowners who got shorted on her Hurricane Ike claim by Travelers Insurance.

“It makes me very angry,” she asked. “Why aren’t we getting what we deserved?”

Guerra is suing Travelers now as a representative of the proposed class of consumers.

She alleges Ike caused roof damage, a downed fence, moisture damage in her walls, and other problems that needed repairs. She says Travelers Insurance did not pay her overhead and profit, leaving her without enough money to hire a general contractor.

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“There really wasn't enough money to get everything done,” she said. “Trying to make up the difference to fix the damage is really impossible.”

Guerra says her family had no choice but to repair the roof over her family's home on their own.

As a result, she says, her family of amateurs was forced to take on what she felt were dangerous repairs they were untrained to do, such as repairing their roof.

Also Online

[Jim Oliver Letter to KHOU, Sept. 9 2009](#)

[Burgess Vs. Farmer jury verdict](#)

[Texas Department of Insurance bulletin on overhead and profits](#)

[Memo from Reggie Warren](#)

[2008 Insurance bulletin on overhead and profits](#)

[Ghoman decision](#)

[State: Texas Windstorm 'unfair or deceptive' with insurance claims](#)

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“We went and bought the material and did it ourselves,” she said. “My husband got up there.”

Guerra says she was petrified about the possible impact on her family, both physically and financially.

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“What if my husband got hurt? He’d lose work.”

Alex Winslow of Texas Watch, a consumer and insurance watchdog group based in Austin, says insurance companies leave overhead and profit off claims far too often.

“Most customers don't even know their policy should be paying it,” he said. “It could be hundreds, (or even) thousands of dollars.”

Winslow says most consumers don’t know they are being shorted when it happens, which is why he says the number of complaints the Texas Department of Insurance has received on the issue should raise red flags.

KHOU discovered at least 60 overhead and profit related complaints made to the Department of Insurance, some dating back to 1997. However, after Ike struck, the number of complaints suddenly accelerated, with 26 of those 60 complaints coming during 2009 alone.

The Texas Department of Insurance felt the issue was important enough to issue a new bulletin in late 2008 about, reminding insurance companies to pay overhead and profit or face penalties. However, to date, department spokesman Jerry Hagins says they have yet to take any enforcement action on the issue.

“Unless an insurance company gets their cage rattled, they're going to continue to try to take advantage of consumers,” said Winslow.

State spokesman Hagins says the Department of Insurance has an open inquiry into many of the ways various insurance companies have been handling Ike-related claims. He says the overhead and profit issue is something they are examining as part of that wider inquiry.

Attorney Javier Delgado, who is filing suit in Texas against five insurance companies on this issue, says many Texans have been taken advantage of and probably have no idea.

“It's so systemic. It's so rampant,” he said. Delgado says insurance companies have good reason to leave overhead and profit off of many of their estimates to consumers.

“If you’re saving 2-thousand dollars on average per claim, that turns out to be a lot of money.”

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He points to how [a jury in Oklahoma issued a \\$130 million verdict](#) against Farmers insurance for not paying overhead and profit to consumers in that state. The case was called Burgess Vs. Farmers and does not affect Texas consumers. Many Oklahoma homeowners will now be eligible to receive up to 20 percent more money than they had previously been paid on their claims. Delgado says his review of Farmers cases in Texas reveals what he alleges are some of the same problems here.

“Over 90 percent of the cases the clients we have that came to us, on the initial estimate Farmers did not pay overhead and profit.”

Delgado says Farmers has since paid the overhead and profit to many of those consumers, but only after he got involved as an attorney. Delgado says you shouldn't have to hire an attorney to be treated fairly.

He also believes the problem with nonpayment of overhead and profit has accelerated in Texas after Ike struck, which is one of the costliest storms to insurance companies in American history.

“I was missing the overhead and profit, which comes to about two grand,” said homeowner Mike Barrera, who is suing Texas Windstorm for nonpayment of overhead and profit.

Barrera says he too was forced to fix his Ike-damaged house by himself, along with help from non-professionals he knew.

“Basically I had to solicit friends, family, we did the majority of it ourselves,” he said.

Barrera says he would have preferred to not put his friends and family at risk on the job, but says he could not hire a general contractor after Texas Windstorm didn't include overhead and profit on his estimate.

“It's a rip off. Bottom line,” said Barrera. “I'm probably one of thousands of people.”

We asked the top executive at Texas Windstorm, Jim Oliver, if and when Texas Windstorm pays overhead and profit to its consumers.

“We're perfectly willing to pay profit and overhead if it's incurred, but we can't put it in the estimate,” he said.

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KHOU showed Oliver dozens of examples where Texas Windstorm appears to have never included overhead and profit in estimates to consumers. Oliver says there is a way for those consumers, or others, to get paid overhead and profit from Texas Windstorm: they have to go out and hire a general contractor first, and then come back to Texas Windstorm and ask for the money later.

KHOU: I need to have the work completed and get a bill from my general contractor before I get overhead and profit from you?

Jim Oliver: Correct.

Texas Windstorm's policy may have been affecting consumers for quite some time. Why? Nearly ten years ago, Texas Windstorm executive Reggie Warren wrote a memo describing similar policies as to what Oliver told KHOU about, saying: "[Overhead and profit is considered if and when a contractor does the work and the expense is incurred.](#)"

Number of Complaints for Non Payment of Overhead and Profit

1997 - 2 complaints

1998 - 1 complaint

1999 - 2 complaints

2000 - 7 complaints

2001 - 1 complaint

2002 - 1 complaint

2003 - 3 complaints

2004 - 2 complaints

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2005 - 3 complaints

2006 - 0 complaints

2007 - 3 complaints

2008 - 9 complaints

2009 - 26 complaints

Source: Texas Department of Insurance

KHOU showed Oliver that memo and asked him about it and its impact on current Texas Windstorm policy. "We're not gonna pay it, unless we understand a general contractor was used, as Mr. Warren has indicated here," Oliver said.

The problem? A year before that memo, in 1998, the Texas Department of Insurance's Commissioner issued an industry-wide bulletin specifically telling insurance companies that making consumers "incur" expenses first, is not proper and ["would be contrary to purposes of the subject insurance policy."](#)

The current insurance commissioner in Texas, Mike Geeslin, reinforced the point in December of 2008 by saying in a new bulletin ["The Department's position has not changed."](#)

The 2008 bulletin from Commissioner Geeslin concludes the Department of Insurance "will take appropriate enforcement action when evidence of unfair claim settlement practices is apparent."

Oliver also told KHOU during the interview that if consumers hire a general contractor, it must be one who is "licensed" by the State of Texas. He also said a consumer could not be paid overhead and profit, if he or she acted as their own general contractor.

"A contractor needs to have a license to be paid overhead and profit," he said.

Jim Oliver: The law says you have to have a license as a general contractor.

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KHOU: To get overhead and profit?

Jim Oliver: Yes, because otherwise you're not entitled to it.

KHOU informed Oliver we could locate no such law. We did find a [federal court decision from Texas, Ghoman Vs. New Hampshire Insurance](#), which found under Texas insurance code a consumer who rebuilt his own house was still entitled to overhead and profit. The decision reads in part, in a decision not related to a Texas Windstorm claim:

“(The insurance company) points out that plaintiff did not actually incur some of these costs because he completed some of the repairs himself. While this may be true, it is legally irrelevant. *See Gilderman*, 649 A.2d at 945 (“All repair and replacement costs are, in theory, ‘contingent’ prior to being incurred.”) ...His recovery is not tied to the repair or replacement of his property.”

Soon after KHOU's on camera interview, we received the following note from Oliver:

“I checked on issues related to profit and overhead and found the following:

1. Reconfirmed that our claims people pay profit and overhead for all contractors whether licensed or not.
2. If a policyholder wants to be his/her own contractor TWIA will pay profit and overhead
3. When an independent adjusting firm fails to include the profit and overhead on an estimate, a sample of our files reviews that we pay profit and overhead.”

Homeowner Cheryl Guerra says it is important regulators protect consumers.

“Somebody has to take care of the people here,” she said, citing her fence that is still down, along with water spots inside her home, that she says are there because her insurance company never gave her enough money to pay for all her repairs.

“If they're not going to take care of me, what am I paying my premiums for?”

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Travelers Insurance did not make a statement on Guerra's lawsuit after multiple attempts to reach a public relations representative.

We asked Farmers Insurance spokesman Jerry Davies about the jury verdict against Farmer's in Oklahoma, as well as the new proposed class action lawsuit in Texas, spearheaded by a homeowner named Manuel Quezada.

"We are aware of the Quezada lawsuit which was recently filed, and we have filed an answer to the plaintiffs' complaint. Our general practice is not to comment publicly about pending litigation."

After our interview with Jim Oliver, he sent a follow-up written statement that seems to reverse at least one of his comments made during that meeting. In the written statement he says:

"Profit and Overhead is not shown as a line item on these estimates because we have included it in the "unit pricing" for each item to be repaired to be sure that adjusters did not omit it as part of the claim. By taking this approach, the policyholder can get Profit and Overhead or he/she can hire someone to supervise the repair work. As stated previously, we pay Profit and Overhead for the policyholder and both licensed and unlicensed contractors. We have had very few complaints about our unit pricing so we believe that our methodology is working as expected."

Oliver also wrote a separate a note to KHOU management about a story we aired last week involving Texas Windstorm's alleged non-payment of claims related to wind-lifted shingles. Oliver called the story "unfair, inaccurate, incomplete, and deceptive" and gave a list of 17 "facts" he felt should have been included in the story. To read his points and the full letter, [click here](#).

Recent lawsuit settlements in other states for non payment of overhead and profit by companies such as Nationwide Insurance have resulted in the agreement to pay consumers that money on claims where three or more "trades" were necessary for a general contractor to oversee. The settlement documents in that case describe a trade as "an occupation of a skilled craftsman, e.g., electrician, drywall installer, carpenter, etc." A notice to Nationwide homeowners in that state says eligible consumers can now receive up to 20 percent of the amount previously paid to them to complete repairs.

Consumers in Texas who want to know if their claim included this money can look on their "proof of loss" statements and their estimates to see if there is a line included for overhead and profit. If you do not see it, and

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believe you had enough repair work to need a general contractor, you may file a complaint by contacting the Texas Department of Insurance here: <http://www.tdi.state.tx.us/consumer/complfrm.html>.

KHOU is collecting stories from consumers on this issue. If you have one to share you can email investigative reporter Mark Greenblatt at mgreenblatt@khou.com.

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