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Insurance News

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State: Texas Windstorm 'unfair or deceptive' with insurance claims

HOUSTON-The Texas Department of Insurance has filed a formal complaint against the Texas Windstorm Insurance Association , accusing it of "unfair or deceptive" handling of claims.

State: Texas Windstorm 'unfair or deceptive' with insurance claims

September 3, 2009 [View larger E-mail Clip More Video](#) In a letter to the State Office of Administrative Hearings, the Department of Insurance says the insurance company could be subject to disciplinary action if the complaint is upheld.

Texas Windstorm is the only insurance option against windstorm damage or hail from hurricanes for consumers who live along coastal sections of the state.

The complaint specifically criticizes how the company handles claims related to wind-lifted roof shingles.

The department's action comes as KHOU continues its ongoing, two-month investigation of Texas Windstorm's claims handling practices, and one week after we asked the State why no enforcement action had been taken against the company. At that time, KHOU cited the 724 consumer complaints we found that the Department of Insurance upheld against the company since Hurricane Ike.

The non-profit Hughen Center is one of many entities that has accused the insurance company of handling claims in bad faith.

"We're into another storm season," said executive director Monte Osburn. "We're going into the season with a damaged roof."

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Osburn said that Texas Windstorm's actions are having a detrimental effect on their services.

The Center provides schooling, housing, and training for special needs kids. In many cases, the children who live there not only have disabilities, but have also been removed from their homes after having been abused or neglected by their natural parents.

"A lot of our kids have either cerebral palsy, spina bifida, muscular dystrophy," said Osburn.

One of those children is 15-year-old Morgan Dodson. Her father sent her there because of the Center's expertise in dealing with spina bifida.

"I have to be in a wheelchair all my life," Dodson said. "People here are like me. They understand what I have to go through."

After Hurricane Ike, the Hughen Center filed a claim for roof damage with Texas Windstorm.

"The roof was actually lifted up and then slammed back down on top of itself," Osburn said.

He said that multiple contractors and an engineer agreed the entire 60,000 square foot roof needed to be replaced, all saying the water seal had been broken in many areas of the roof, allowing water to still leak into classrooms below.

Osburn and one of his contractors told KHOU they were in the room at the same time when one of Texas Windstorm's own insurance adjusters verbally agreed the entire roof needed to be replaced.

However, they allege the company itself never came through. The impact, they say, is a roof that is still leaking into areas where children are supposed to attend class. The leaking water has also forced the Hughen Center to delay for an entire year the opening of a new school for 250 children, Osburn said.

The low-bid submitted by contractors to replace the roof was \$270,000. However, Texas Windstorm paid out just \$16,000.

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Osburn says he and his contractor both appealed to Texas Windstorm's adjuster late last year. They shared emails from late December with KHOU where the appeal was sent to the adjuster.

Osburn said neither the contractor nor the Hughen Center heard back from Texas Windstorm. In May, he says the Hughen Center had no other choice but to file suit.

"These children are deserving of their attention," he said. "The insurance we paid a good quantity of money for has not come through."

In a response, Texas Windstorm denies wrongdoing and says it is eager to resolve the matter with the Hughen Center. It also said that the Center's lawyers are now delaying the resolution of the matter by not allowing an adjuster to return to the property for another investigation.

Other homeowners like Pat Conner of Friendswood say they've also experienced trouble with Texas Windstorm.

Conner's home sustained damage in multiple places, however he feels the company substantially shortchanged him on their payment for his roof damage.

"The adjuster never got up on the roof so how do you know what damage is up there," Conner asked. "I have several bids from \$15,000 to \$17,000 to replace it. They actually paid me like \$290. It's a joke."

Conner said that one section of his roof has shingles that were lifted by the high winds of Hurricane Ike, that broke the water seal. Signs of water damage run throughout internal areas of his home, he said.

Conner is deeply troubled by Windstorm internal emails and memos that KHOU uncovered two months ago.

One email KHOU found was written on December 10, 2008, and is written by an adjuster working for Texas Windstorm. He was seeking guidance on whether to pay claims dealing with lifted shingles or whether to deny them outright.

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He writes: "This issue is coming up more and more... Can you give me some guidance on this issue of wind-lifted shingles that do not stick?"

The adjuster noted that, "We are seeing photos of debris under the shingle and insureds are claiming they won't re-adhere."

The adjuster included a specific example and a copy of a report from an engineer who is licensed by the state of Texas and specially certified by the Texas Department of Insurance to examine consumer claims after a storm.

The engineer concluded in his official report that, "It is my opinion that the shingles will not perform as designed under high winds and may fail causing moisture related damage to the interior portion of the residence. In my opinion, the roof should be replaced to prevent any future moisture related damage to the residence."

However, the top catastrophe manager for all of Texas Windstorm responded in an email to his adjuster by saying: "We don't put any credence in these two page drive-by engineer reports. If we paid the claim because of lifted shingles, I didn't know about it and it should not have been done. You understand our position."

In describing his thinking further on wind-lifted shingles, the top executive continues by writing, "It probably was that way long before Ike."

The email was carbon-copied to many of the top claims officers for Texas Windstorm statewide. Three days later, the company's very top claims manager sent out a memo to every insurance adjuster who works for the company Texas Windstorm's position on the matter.

"That memo is over the top," state Senator Glenn Hegar of Katy said. Hegar has overseen insurance issues in Texas for years.

"The consumer loses. Because they pay a premium and they don't get their roof repaired," he said.

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KHOU asked Hegar about the 724 justified consumer complaints we had found against Texas Windstorm since Ike.

"That's too many," he said.

It turns out that Texas Windstorm has more than five times the number of justified complaints of any insurance company in the state since the hurricane struck. It also has the highest rate of overall complaints being upheld as "justified" by the Texas Department of Insurance.

In fact, the Department found nearly two out of every three consumer complaints to be justified, and helped negotiate more than \$12 million in added money that Texas Windstorm has had to pay consumers since the hurricane.

Senator Hegar says consumers should not have to complain to the Department of insurance to get treated fairly. However, he also worries about consumers who did not think to complain formally to the State.

"If consumers haven't been paid what they deserve, and the case is closed, the question is, 'Should the case be opened,'" he said. "If you have a numerous amount of complaints, 700 that were justified, complaints that were true and correct and had to be remedied, we need to look at this and make sure all of those 100,000 people (who filed claims with Texas Windstorm) are paid what they deserve."

KHOU travelled to Texas Windstorm's headquarters in Austin to ask the top executive at the company about the complaints, memos, and the emails we found describing how Texas Windstorm assumes wind lifted shingles or debris must have been that way "long before Ike."

KHOU: "If you're going to deny coverage should you not have to go out there with an engineer and prove there was damage before that storm took place?"

Jim Oliver: "No."

Jim Oliver's official title is the general manager of Texas Windstorm, a non-profit company that is governed by a nine-member board of directors. Five of those nine members are representatives of for-profit insurance companies who operate in Texas.

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We asked why Texas Windstorm automatically assumes damage took place before the storm, even when homeowners claim differently.

Jim Oliver: "There's no way to know whether Hurricane Ike unsealed that shingle."

We also asked about the previously mentioned internal memos KHOU uncovered.

KHOU: "A lot of folks who've seen this memo, believe you're looking at every claim on an individual basis with a predisposed mindset, to deny their claim."

Jim Oliver: "I'm telling you we do not look at it with a predisposed mindset."

KHOU: "But you're agreeing with the fact, in your opinion, any un-adhered shingles were likely that way before the storm. You don't think that's predisposed?"

Jim Oliver: "Well, we may be predisposed to thinking an unsealed shingle was more than likely unsealed prior to the storm."

KHOU: "Isn't that a problem in your mind?"

Jim Oliver: "No it's not a problem in my mind."

Oliver also suggested Texas Windstorm might pay claims for lifted shingles if a consumer could provide physical evidence to prove the company's assumption wrong.

Jim Oliver: "If someone has some evidence they bring to us that in fact these shingles were sealed in advance, and they're certain they were, there's some evidence. Perhaps they had a roofer come out three or four weeks before the storm, they would say, 'Look I've got this evidence, I've got it,' then we would consider resealing."

KHOU asked if Oliver intended to send the message to Texans along the coast to climb on their roofs to get this evidence before the next storm if would like to have a claim paid for lifted shingles.

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Jim Oliver: "Well I think you're carrying it to an extreme."

KHOU: "What kind of proof do (our) viewers need to have, so they can get paid?"

Jim Oliver: "If everybody has that concern, then I would say if they find someone who can prove that in advance, keep that evidence, then yes."

"I can tell you, I'm not going to climb up on my roof every time the wind blows," Senator Hegar said. "That's how people go to the hospital. They fall off roofs and get hurt. If that is the case in Texas, we need to make sure it is not."

KHOU is collecting stories from concerned consumers on this issue. If you want to share your story email Mark Greenblatt at mgreenblatt@khou.com.

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