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Lawsuit says windstorm insurer rigged process

The state windstorm insurer may have unfairly stacked the deck against homeowners with Hurricane Ike claims, according to a lawsuit filed Friday, and that has one lawmaker calling for an investigation.

The Texas Windstorm Insurance Association used prices lower than market rates to estimate materials and repair costs, unfairly limited costs on roof repairs and discouraged reopening closed claims, a League City home-owner alleges in a lawsuit that includes internal TWIA e-mails and documents.

"The game is rigged from the beginning," said Steve Mostyn, the homeowner's attorney who obtained hundreds of documents through the discovery process. "All the parts are designed for one purpose, which was to save money and underpay these claims every way they can, not by accident nor incompetence but a systematic effort."

Mostyn also serves as the court-appointed lead counsel for discovery for all Ike-related cases against TWIA in Galveston County.

'Practices are fair'

Jim Oliver, general manager of the state-backed insurer, declined to comment on specifics of the allegations but said he doesn't agree with the plaintiff's interpretation of the documents

. "We hope that those viewing the documents will give the legal process time to work and are confident that it will show that TWIA's claim-handling practices are fair to our policyholders," Oliver said in a written statement.

Policyholders filed more than 90,000 claims after Ike.

One lawmaker found the allegations and documents so alarming he called for an investigation of the insurer and its oversight by the Texas Department of Insurance.

"The documents demonstrated a callous attitude toward insured families of the Texas coast," Sen. Rodney Ellis, D-Houston, said in a written statement. "These documents demonstrate a pattern of deception resulting in wrongful underpayment and denial of Hurricane Ike claims by TWIA."

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A spokesman for the insurance department declined to comment.

The lawsuit alleges the insurer told adjusters to base claims estimates on an internally developed price guide — with prices lower than market — instead of pricing software commonly used by the industry.

One adjusting firm reported the market rate for roof repairs was \$230 to \$255 per 100 square feet, but TWIA's price was \$182, the lawsuit claims. In internal documents filed with the lawsuit, the association portrays its prices as just a guideline.

Worried about overpayment

But when USAA, a private insurer that also handled some claims for TWIA, used prices from industry software, a TWIA manager worried that USAA was paying more on losses than other adjusters.

"This could create a problem at TWIA in the long run if it is discovered that USAA was allowed to do something different than the other" adjusting firms, Reggie Warren, vice president of claims, wrote in an e-mail to USAA.

In the same e-mail, he grants USAA permission to use the software, but suggests the association should rethink its contract with the company. A spokesman for USAA declined to comment.

One e-mail may bolster separate litigation in which TWIA is accused of denying some policyholders payment for what's known as "overhead and profit." TWIA knew insurance regulators required insurers to pay overhead and profit when estimating claims for damage that would likely require the use of a general contractor — even if homeowners oversee the work themselves, according to one e-mail.

"... (We) need to add OH & P to arrive at the appropriate repair/replacement cost, regardless if a contractor is involved," Warren wrote in June 2008.

Despite knowing this, TWIA denied the overhead and profit payments on Ike claims involving roofs, fences, floors and some other trades, the lawsuit alleges.

Oliver said TWIA paid when the services of a general contractor were "reasonably necessary."

TWIA went to great lengths to limit costs, especially on roof claims, according to the lawsuit. When one adjuster sought permission to replace a damaged roof on a Port Isabel home because the original shingles had been recalled, Warren suggested pulling shingles from a neighboring roof that was being replaced.

"I am not ready to lay over and play dead yet," he wrote. "Check around the neighborhood for a possible solution. ... Sometimes we allow for a small slope with a laminated shingle and then salvage the shingles that are torn off it to make repairs on the other slopes."

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Whether such a practice is prohibited depends on insurance policy language, said Birny Birnbaum, head of the Austin-based Center for Economic Justice, a consumer advocacy group.

“But it’s penny wise and pound foolish because if you put older shingles on, they’re much more likely to get damaged,” he said. TWIA has also long said it would not pay for lifted shingles.

At one point, manager Bill Knarr instructed adjusters to pay to reseal lifted shingles only as a last resort.

“These instructions are the last resort when no one will take no for an answer,” he wrote in an e-mail to an adjuster. The e-mail suggests unfair discrimination, Birnbaum said. “Sounds like if you’re a reasonable consumer, you get screwed,” he said. “If you’re abrasive you get something out of it. That’s the way insurance companies want to treat insureds, and then they complain about fraud.”

By November, TWIA was getting hit with requests from policyholders asking for their homes to be reinspected. If an adjuster finds more damage upon additional visits, they submit what’s known as supplements to the claims.

'Not getting the job done'

In an e-mail to an adjusting firm in November, Warren noted that many of the adjusters it used were inexperienced and “not getting the job done.” If adjusters had done a better job the first time they visited a site, there would be fewer files to reopen, he noted.

Despite acknowledging TWIA could face many reopened claims because of adjuster mistakes, the insurer made it hard for homeowners to get their claims reexamined, according to the lawsuit. Warren told adjusters in a memo that homeowners had to have credible evidence to force the reopening of a claim.

An estimate from a public adjuster — independent adjusters hired by homeowners — was not enough, according to the memo.

To make matters worse, in late 2008 TWIA restructured how it paid adjusters for re-inspections, effectively discouraging them from looking for more damage, according to the lawsuit. After Dec. 1, adjusting firms earned \$105 plus time and expenses if they denied a claim, according to the litigation.

If they found more damage, they risked not getting paid at all if TWIA determined an adjuster erred during the first inspection, according to the lawsuit. The lawsuit doesn’t state how much in damages or penalties the homeowner is seeking.

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