



Texas Department of Insurance

Enforcement Division, Mail Code 110-1A
333 Guadalupe • P. O. Box 149104, Austin, Texas 78714-9104
512-475-1821 telephone • www.tdi.state.tx.us

August 27, 2009

Jim Oliver
The Texas Windstorm Insurance Association
5700 South MoPac Expressway
Building E, Suite 530
Austin, TX 78749

VIA CERTIFIED MAIL NO.
7007 2560 0003 3235 9381
RETURN RECEIPT REQUESTED
AND FIRST CLASS MAIL

Gail Watkins and Scott Incerto
Fulbright & Jaworski, L.L.P.
600 Congress Ave., Suite 2400
Austin, TX 78701-2978

VIA CERTIFIED MAIL NO.
7007 2560 0003 3235 9398
RETURN RECEIPT REQUESTED
AND FIRST CLASS MAIL

RE: TDI FILE NO. 55996; FIRST AMENDED NOTICE OF PUBLIC HEARING IN DOCKET NO. 454-09-6187.C TO CONSIDER DISCIPLINARY ACTION AGAINST THE TEXAS WINDSTORM INSURANCE ASSOCIATION.

Dear Texas Windstorm Insurance Association:

Please consider this formal notice that a public hearing will be held before an Administrative Law Judge at **9:00 a.m. on December 1, 2009**, in the offices of the State Office of Administrative Hearings, 300 West 15th Street, William P. Clements Building, Fourth Floor, Austin, Texas 78701. The hearing shall be conducted in accordance with the provisions of TEX. GOV'T CODE CHAPTER 2001 and 1 TEX. ADMIN. CODE, Chapter 155. Unless otherwise directed by the Administrative Law Judge, the hearing shall continue from day to day in the offices of the State Office of Administrative Hearings until concluded.

YOU MUST FILE A WRITTEN RESPONSE TO THE NOTICE OF HEARING WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS WITHIN 20 DAYS OF THE DATE THE NOTICE OF HEARING WAS MAILED. FAILURE TO FILE A WRITTEN RESPONSE BY THIS DEADLINE SHALL ENTITLE TDI TO SEEK DISPOSITION BY DEFAULT PURSUANT TO 1 TEX. ADMIN. CODE § 155.501 AND 28 TEX. ADMIN. CODE §§ 1.88 AND 1.89.

IF YOU FAIL TO FILE A WRITTEN RESPONSE, THE SCHEDULED HEARING CAN BE CANCELED AND WITHOUT FURTHER NOTICE TO YOU THE COMMISSIONER OF INSURANCE CAN ISSUE AN ORDER IN WHICH THE ALLEGATIONS IN THE NOTICE OF HEARING ARE DEEMED ADMITTED AS TRUE AND THE RELIEF SOUGHT IN THE NOTICE OF HEARING, INCLUDING ISSUANCE OF A CEASE AND DESIST ORDER, AND/OR IMPOSITION OF ADMINISTRATIVE PENALTIES, IS GRANTED BY DEFAULT.

IF YOU FILE A WRITTEN RESPONSE BUT THEN FAIL TO APPEAR ON THE DAY AND TIME SET FOR HEARING, WITHOUT FURTHER NOTICE TO YOU, THE COMMISSIONER OF INSURANCE CAN ISSUE AN ORDER IN WHICH THE ALLEGATIONS IN THE NOTICE OF HEARING ARE DEEMED ADMITTED AS TRUE AND THE RELIEF SOUGHT IN THE NOTICE OF HEARING, INCLUDING ISSUANCE OF A CEASE AND DESIST ORDER, AND/OR IMPOSITION OF ADMINISTRATIVE PENALTIES, IS GRANTED BY DEFAULT.

In accordance with the provisions of 28 TEX. ADMIN. CODE § 1.90(e) and 1 TEX. ADMIN. CODE §§ 155.101 and 155.103, copies of such written response should be sent to:

- (1) Docketing Division
State Office of Administrative Hearings
300 West 15th Street
Room 504
P. O. Box 13025
Austin, Texas 78711-3025;
- (2) Chief Clerk
Texas Department of Insurance, MC113-2A
P. O. Box 149104
Austin, Texas 78714-9104; and
- (3) Steven M. Augustine
Texas Department of Insurance
Enforcement Division, MC110-1A
333 Guadalupe
Austin, Texas 78701

The Commissioner of Insurance has jurisdiction over this matter pursuant to TEX. INS. CODE ANN. Chs. 541 and 542; TEX. INS. CODE ANN. §§ 82.051-82.056 and 84.021-84.022; 28 TEX. ADMIN CODE §§ 5.4001-5.4800; and TEX. GOV'T CODE ANN. §§ 2001.051-2001.178.

The allegations against the Texas Windstorm Insurance Association include the following:

1. The Texas Windstorm Insurance Association ("TWIA") is an unincorporated association created under TEX INS. CODE Ch. 2210 for the purpose of providing windstorm and hail insurance on insurable property located in the designated catastrophe area as provided in Chapter 2210.
2. In September of 2008, Hurricane Ike impacted the gulf coast of Texas. Hurricane Ike was a covered windstorm under the TWIA Dwelling Policy ("Policy").
3. In pertinent part, the Policy reads, "We cover direct physical loss to the covered property caused by windstorm or hail unless the loss is excluded in the Exclusions."

NOTICE OF HEARING

Texas Windstorm Insurance Association

Page 3 of 4

4. The Policy does not define the term "direct physical loss."
5. The Policy does not contain any exclusion for damage in the form of unadhered, unsealed, or lifted shingles.
6. On February 2, 2009, TWIA issued a Memorandum ("Memo") to Adjusting Firms and Adjusters and Internal TWIA File Examiners that stated in part:

Texas Windstorm Insurance Association intends to pay for the covered windstorm loss on every valid claim, including roofs. It is important to note that [TWIA] only cover[s] **direct, physical, loss** from windstorm. Direct means it happened during Ike or Dolly, physical means the damage to the property is clearly visible and there must be a loss (destruction or damage to property) involved. Shingles that show no signs of damage other than they are not sealed and can be raised with your hand are not considered windstorm damaged. (emphasis in the original)
7. Starting on or about February 6, 2009, some insureds who filed complaints with TDI began receiving letters from TWIA regarding unsealed shingles. One such letter, states in relevant part:

"We cover direct physical loss to the covered property caused by windstorm or hail unless the loss is excluded in the Exclusions."

It is the opinion of TWIA management that this means "we need evidence of direct (this means it happed [sic] during the storm), Physical (this means you can see the damage), Loss (this means damage) due to the windstorm. Loose, unadhered shingles in place are not necessarily windstorm damage. Our research reveals many shingles are not sealed prior to the storm and the sealant is not necessary for a roof to repel water."
8. Another letter from TWIA states, "We only cover direct physical loss from windstorm. It is our position that unadhered shingles are not evidence of windstorm damage."
9. TDI has received complaints indicating that TWIA used the definitions and position set forth in the Memo in determining that unadhered, unsealed, or lifted shingles would not be covered under the Policy.
10. Previously sealed shingles that are no longer adhered constitute a physical loss to the property. A causation issue exists as to whether the physical loss was directly caused by a windstorm or hail, or in this instance, Hurricane Ike. A denial of coverage based on the position that unadhered, unsealed, or lifted shingles never constitute windstorm damage, without a determination that the unsealed shingle was not caused by a covered windstorm, is inappropriate under the policy.
11. TWIA's handling of claims involving unadhered, unsealed, or lifted shingles, if based on the position set forth in the Memo, constitutes unfair or deceptive acts or practices under

TEX. INS. CODE ANN. Ch. 541 and unfair claim settlement practices under TEX. INS. CODE ANN. CH. 542.

The conduct alleged above, if true, constitutes grounds for disciplinary action against TWIA because TWIA directly or indirectly:

1. engaged in unfair settlement practices, in violation of TEX. INS. CODE ANN. § 542.003, 541.060, and 541.061; and
2. engaged in unfair methods of competition and unfair or deceptive acts or practices, in violation of TEX. INS. CODE ANN. §§ 541.003, 541.060 and 541.061.

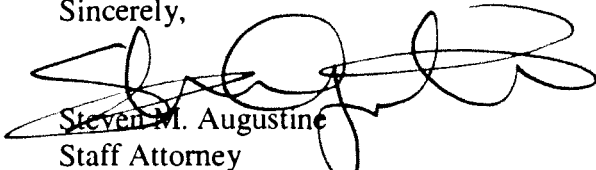
If one or more of the above allegations is found to be true, the Commissioner may enter an order imposing any sanction provided by law pursuant to TEX. INS. CODE ANN. Chapters 82 and 84.

TWIA has the right to appear at this hearing and to be represented by and through an attorney or any other duly authorized representative. Should there be any questions concerning this matter, the undersigned may be contacted by mail by addressing correspondence to Steven M. Augustine, Texas Department of Insurance, MC 110-1A, 333 Guadalupe, Austin, Texas 78701, or by telephone at (512) 322-3428.

IMPORTANT SECURITY NOTICE:

ALL VISITORS TO THE WILLIAM P. CLEMENTS BUILDING WITHOUT AN AGENCY OR DPS ISSUED ID CARD MUST PROVIDE THE BUILDING SECURITY OFFICER WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS DOCKET NUMBER AND RECEIVE A VISITOR'S PASS IN ORDER TO BE ALLOWED ACCESS TO THE HEARING ROOM. INDIVIDUALS SHOULD ALLOW ADDITIONAL TIME TO GO THROUGH THE SECURITY PROCESS.

Sincerely,



Steven M. Augustine

Staff Attorney
Enforcement Division, MC110-1A
Texas Department of Insurance
333 Guadalupe Street
Austin, Texas 78701-9104
(512) 322-3428
(512) 475-1772 (Fax)
SBN: 24064845

cc: Catherine Reyer, Associate Commissioner, Enforcement MC-110-1A
Lorrie Ensley, Team Leader, Enforcement MC-110-1A