

Windstorm insurer to settle some Ike cases

By PURVA PATEL Copyright 2010 Houston Chronicle

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The state-created windstorm insurer at the center of thousands of Hurricane-Ike related lawsuits has agreed to settle a chunk of them.

The Texas Windstorm Insurance Association will pay out an estimated \$189 million to policyholders whose homes were razed to the slab nearly two years ago.

That figure assumes all of about 2,400 slab claims against the insurer are resolved under the proposed settlements, said policyholder attorney Steve Mostyn.

Individual policyholders that have attorneys can choose if they want to accept the offer, which includes the following:

- . 37 percent of the home's replacement value, minus any payments already made.
- . Attorney fees, which will total 40 percent of the total claims payout.
- . 25 percent of the value of their coverage for contents.
- . 35 percent of additional living expense coverage, which pays homeowners for expenses if they have to temporarily live elsewhere.

Policyholders who weren't represented by attorneys or went through state administrative courts will receive payments from a separate class-action settlement that will include similar terms. That settlement, however, is pending approval by Galveston County 212th District Court Judge Susan Criss.

TWIA, created by the state but privately managed, is the windstorm insurer of last resort for homeowners and businesses in coastal counties most vulnerable to hurricanes.

Attorneys have argued that the insurer arbitrarily determined that wind caused 11.2 percent of the damage to homes knocked down to their slabs and then unfairly based claims payments on that figure.

Policyholder attorneys agreed to settle the cases, in part, because of a legal requirement that shifts the burden to plaintiffs to prove how much damage was caused by wind, since the destruction also could have been caused by water.

"At the end of the day it's going to be difficult," Mostyn said, noting attorneys were able to use models to show at least about 30 percent to 40 percent of damage was from wind. "I don't like the way the law is, but it is what it is."

TWIA has, and continues, to argue that it calculated claims properly.

"The proposed settlement represents a compromise as a result of mediation," TWIA general manager Jim Oliver said in a written statement. "TWIA does not believe its adjusting methods were flawed, and it has not admitted liability by entering into a settlement."

The settlements follow six days of mediation, said Tony Buzbee, who represented about 300 clients with slab claims.

TWIA is already sending offer letters to attorneys who are sharing them with clients, Buzbee said, adding that it's a fair offer for most of his clients with slab claims since how much damage was caused by wind is hard to calculate when there's no structure left.

"Some clients may have witnesses or other evidence," he said. "But for most clients it's a good deal."

TWIA still faces various other lawsuits related to how it handled claims, including those for damaged roof shingles. It also faces a lawsuit from the Texas Department of Insurance on the shingles issue.

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