



## MEMORANDUM

To: The Honorable John Carona  
Chair, Senate Committee on Business & Commerce

From: John W. Polak, CPCU  
General Manager

Date: January 4, 2012

Re: Texas Windstorm Insurance Association Quarterly Update for the January 10, 2012 public hearing of the Senate Committee on Business & Commerce

Pursuant to your request for quarterly updates from the Texas Windstorm Insurance Association (“TWIA”), please find the following information for you and the members of the Senate Committee on Business & Commerce.

### **I. Status of implementation of last session’s key legislation.**

House Bill 3 (“HB 3”) as enacted by the 82<sup>nd</sup> Legislature, 1<sup>st</sup> Called Special Session, became effective on September 28, 2011. New residential and commercial policies and endorsements have been issued by TWIA for new and renewal business on and after November 27, 2011. The following implementation plan illustrates major accomplishments by TWIA since the passage of HB 3.

#### **Texas Windstorm Insurance Association Timeline for House Bill 3 Implementation 2011-2012<sup>1</sup> as of January 4, 2012**

Date	Action	Notes\Statutory Authority
8/15/11	Emergency Rule to extend the eligibility of non-compliant structures to continue with TWIA coverage without meeting building code standards.	Adopted to close a gap between 9/1/11 expiration to 9/28/11 when statute effective.
8/19/11	TWIA files revised commercial and dwelling policies including eight revised endorsements and one new endorsement based upon passage of House Bill 3.	Approved 10/21/11.

<sup>1</sup> Timeline and dates may change to the extent the action is dependent on outside third parties.

9/15/11	TDI requests informal comments from stakeholders regarding the establishment of rules related to the new appraisal provisions in HB 3; the new dispute resolution provisions in HB 3; and the expert panel to be used on wind/water claims. Rule to be proposed sometime in late October 2011.	Comments submitted on 9/30/11. Sec. 2210.574 Sec. 2210.575 Sec. 2210.578 Sec. 2210.580
9/19/11	Public Hearing held on new TWIA policy forms.	
9/28/11	House Bill 3 became effective.	
9/28/11	New HB 3 Tab is active on TWIA website. The changes are dedicated to informing policyholders, agents, and other stakeholders about the changes to TWIA and the claims process resulting from the passage of HB 3. The website is divided into the following sections: legislation, public information act, and open meeting requirements. The legislation section of the website includes detailed information about House Bill 3, including a copy of the text of the bill and a summary of the bill's key sections. Also included in this section are documents intended to help educate stakeholders including: an illustrative chart to show how the claims process works; timelines for filing and processing claims and the various claim dispute processes; a link to the TDI website to find proposed or adopted rules relating to TWIA; a bulletin to agents and FAQs regarding the alternative eligibility program; and a summary of the policy changes.	TWIA initiative.
9/28/11	One-Year Deadline to File Claim. The deadline to file a claim under a Texas windstorm and hail insurance policy delivered, issued for delivery, or renewed before 9/28/11 is governed by the law in effect on the date the policy under which the claim is filed was delivered, issued for delivery, or renewed.	HB 3 – Secs. 62(b)& Sec. 41 Enactment Clauses  Sec. 2210.573
9/28/11	For any cause of action that accrues on or after September 28, 2011 (regardless of the date the policy was issued), the policyholder's recovery under any cause of action is limited to:  A. Policy benefits for a covered loss, less prior payments B. Prejudgment interest from the first day after the date TWIA would have been required to pay an accepted claim at the rate provided in Finance Code Chap. 304	HB 3 - Sec. 62(g) Enactment Clauses  Sec. 2210.573(d) Sec. 2210.5731 Sec. 2210.578(f)

	<p>C. Court costs and reasonable and necessary attorney's fees</p> <p>D. Consequential damages as provided under common law</p> <p>E. An aggregate of (A) + (D) as "additional damages" if policyholder proves by clear and convincing evidence that TWIA intentionally mishandled the claim to policyholder's detriment by conduct set out in 2210.576(d).</p> <p>A cause of action generally accrues when TWIA issues the disputed claim decision. In most cases, this will be the date a claim is paid if the allegation is underpayment of benefits. It could also be the date TWIA rejected or underpaid a supplemental claim, or the date TWIA sent a claim denial letter out to the insured.</p>	
9/28/11	Appraisal. For claims under policies delivered/issued/renewed before November 27, 2011, if the policyholder disputes the amount TWIA will pay for a partially or fully accepted claim, the policyholder must attempt to resolve the dispute through appraisal. TWIA interprets this provision is applicable to claims existing before September 28, 2011 if TWIA made a disputed claim decision on or after September 28, 2011	Sec. 62 – HB 3 Enactment Clauses
10/5/11	Alternative Certification information and FAQs placed on TWIA website	TWIA initiative.
10/14/11	Publication of proposed rule to reduce minimum retained premium from 180 to 90 days and implement new declination requirements for every three years.	Sec. 2210.204 Sec. 2210.202 Effective on 1/8/12
10/14/11	Publication of proposed rule to establish the Ombudsman, Coastal Outreach and Assistance Services Team (COAST) Program, at TDI pursuant to HB 3 and funded by TWIA.	Sec. 2210.582
10/21/11	TDI approves new policy forms, endorsements, and manual.	To be issued on and after 11/27/11.
10/28/11	First TWIA Board of Directors meeting is broadcast over the TWIA website.	Sec. 2210.105(e)
11/22/11	Plan of operation amendments filed with TDI.	Sec. 63 – HB 3 Enactment Clauses
11/27/11	TWIA begins issuance for new policy forms and endorsements on new policies and renewal policies.	Sec. 62 – HB 3 Enactment Clauses

11/30/11	TWIA issues first bi-monthly report card to board of directors on meeting the five primary board objectives (Report Card) for September-October 2011 timeframe.	2210.107
1/31/12	Post on the TWIA website any compensation that exceeds \$100,000 in a calendar year paid to a vendor, independent contractor, or TWIA employee	2210.061
1/31/12	TWIA issues bi-monthly report card to board of directors on meeting the five primary board objectives (Report Card) for November-December 2011 timeframe.	2210.107
2/29/12	File Annual Statement with the TDI and the State Auditor's Office	2210.054(a)
3/31/12* <sup>2</sup>	Development of simplified renewal process that allows for the acceptance of an application for renewal coverage, and payment of premiums, from an agent or insured person.	2210.202(b)
3/31/12	TWIA issues bi-monthly report card to board of directors on meeting the five primary board objectives (Report Card) for January-February 2012 timeframe.	2210.107
5/1/12	TWIA shall transfer to the ombudsman program money in the amount equal to the amount of the budget adopted by the commissioner.	2210.582
5/31/12*	TWIA in cooperation with the Texas Public Finance Authority to have a public securities program in place for 2012 hurricane season.	Subchapter M., 2210.601-2210.620
5/31/12	TWIA issues bi-monthly report card to board of directors on meeting five primary board objectives (Report Card) for March-April 2012 timeframe. <i>This bi-monthly report may be submitted as part of the annual report which must be submitted no later than June 1, 2012.</i>	2210.107
6/1/12	TWIA issues annual report card to board on meeting the five primary board objectives in the 12-month period preceding the date of the report (Report Card). Filed with Commissioner, legislative oversight board, the governor, lieutenant governor, and speaker.	2210.107
6/1/12	If TWIA does not purchase reinsurance, the board shall submit a report to the Commissioner, the governor, and legislative leadership containing an actuarial plan for paying losses in the event of a	2210.453

<sup>2</sup> All prospective deadlines are established in statute except those entries noted with an asterisk (\*).

**Texas Windstorm Insurance Association**

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	catastrophe with estimated damages of \$2.5 billion or more.	
6/1/12	The board shall submit a catastrophe plan to the Commissioner, the governor, and legislative leadership covering the date the plan is submitted and ending on May 31, 2013.	2210.455
7/31/12	TWIA issues bi-monthly report card to board of directors on meeting the five primary board objectives (Report Card) for May-June 2012 timeframe.	2210.107
9/30/12	TWIA issues bi-monthly report card to board of directors on meeting the five primary board objectives (Report Card) for July-August 2012 timeframe.	2210.107
11/30/12	TWIA issues bi-monthly report card to board of directors on meeting the five primary board objectives (Report Card) for September-October 2012 timeframe.	2210.107
12/31/12*	Implementation of simplified renewal process.	2210.202(b)
12/31/12	Board submits its Biennium Report to the commissioner, legislative committees, and the Sunset Advisory Commission, a written report relating to the operations of the association during the preceding biennium. The report must include: (1) any proposed changes in the laws relating to regulation of the association and a statement of the reasons for the changes; and (2) any information regarding association operations or procedures that is requested by the department to be addressed in the report.	2210.0025
12/31/12	The Biennium Report will contain the results of a joint study between TWIA and TDI regarding the efficiency and effectiveness of a single adjuster program, and will include a study by TDI regarding the feasibility of TWIA writing policies directly.	HB 3, Section 61.

**II. Issues of possible interest to the committee members that have occurred since the end of the special session.**

**Catastrophe Reserve Trust Fund (CRTF)**

As of November 30, 2011, the CRTF had a balance of \$146.2 million from additional amounts being deposited monthly resulting from surcharge deposits. TWIA is required by statute to annually deposit excess funds into the CRTF, but this amount will not be determined until the annual statement is complete for 2011. Because of a January 9, 2011 hailstorm across Nueces, Aransas, and San Patricio counties, almost \$100 million has been incurred on over 8800 claims

and related expenses that could have been deposited into the CRTF had there been no severe weather in 2011. As of now, TWIA expects the payment into the CRTF for 2011 to be approximately \$120 million.

**Litigation**

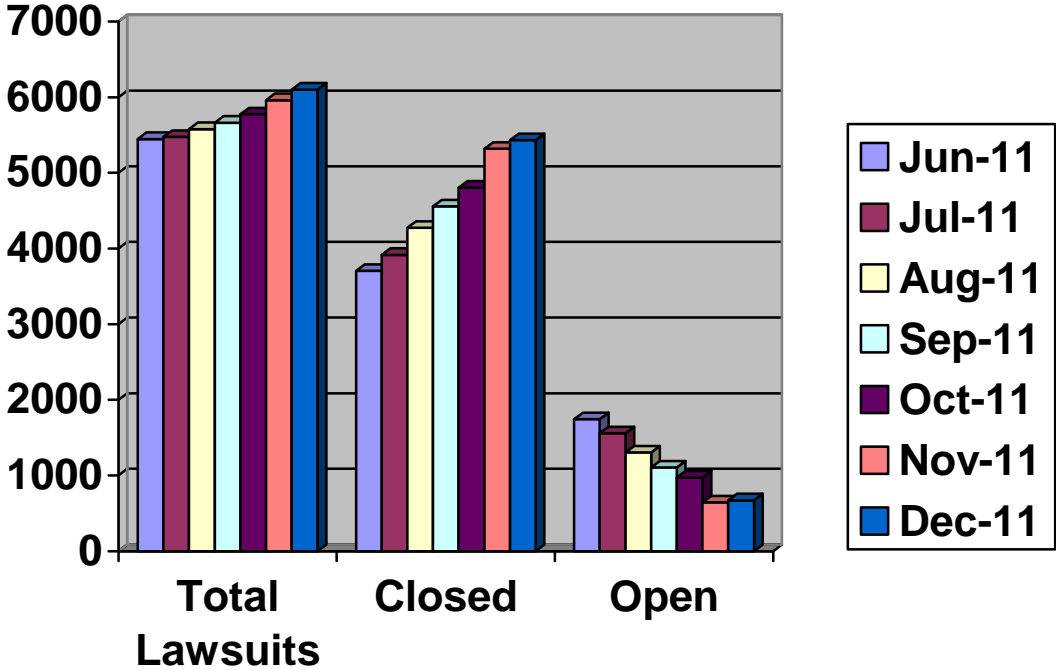
TWIA continues to receive new lawsuits from Hurricane Ike (2008) and Hurricane Humberto (2007) while Hurricane Dolly (2008) only has one lawsuit remaining. To date, TWIA has spent almost \$60 million in defense costs related to litigation from these storms. Of that amount, approximately \$40 million are directly related to general claims litigation, and the additional \$20 million includes: \$8.7 million in court ordered e-discovery and institutional discovery; conclusion of TDI enforcement matters; \$5.8 million in slab defense costs; and \$1.7 million in remaining class action matters which are still pending resolution. Since June 1, 2011, TWIA has received 781 new lawsuits.

<b>Month</b>	<b>Number of New Lawsuits</b>
June 2011	132
July 2011	68
August 2011	106
September 2011	141
October 2011	107
November 2011	100
December 2011	127

**TWIA Hurricane Ike Litigation**  
**June 2011 through December 2012**

<b>Date</b>	<b>Total Lawsuits</b>	<b>Closed</b>	<b>Open</b>
<b>June 2011</b>	<b>5445</b>	<b>3703</b>	<b>1742</b>
<b>July 2011</b>	<b>5474</b>	<b>3918</b>	<b>1556</b>
<b>Aug 2011</b>	<b>5576</b>	<b>4274</b>	<b>1302</b>
<b>Sept 2011</b>	<b>5661</b>	<b>4557</b>	<b>1104</b>
<b>Oct 2011</b>	<b>5774</b>	<b>4804</b>	<b>970</b>
<b>Nov 2011</b>	<b>5961</b>	<b>5318</b>	<b>643</b>
<b>Dec 2011</b>	<b>6101</b>	<b>5432</b>	<b>669</b>

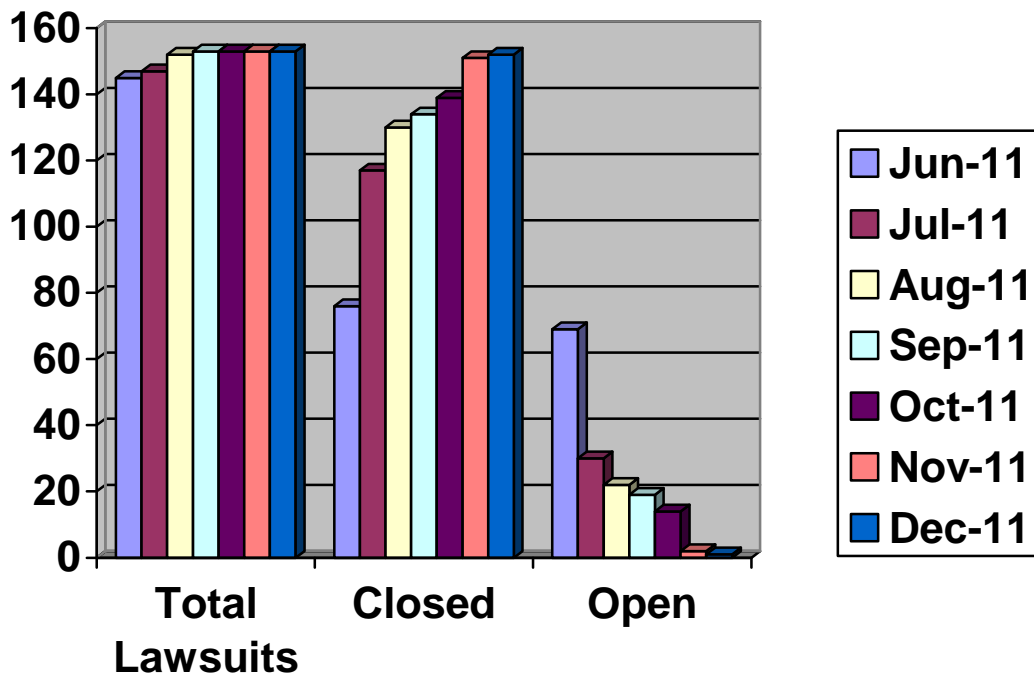
**TWIA Hurricane Ike Litigation**  
**June 2011 through December 2012**



**TWIA Hurricane Dolly Litigation**  
**June 2011 through December 2012**

Date	Total Lawsuits	Closed	Open
June 2011	145	76	69
July 2011	147	117	30
Aug 2011	152	130	22
Sept 2011	153	134	19
Oct 2011	153	139	14
Nov 2011	153	151	2
Dec 2011	153	152	1

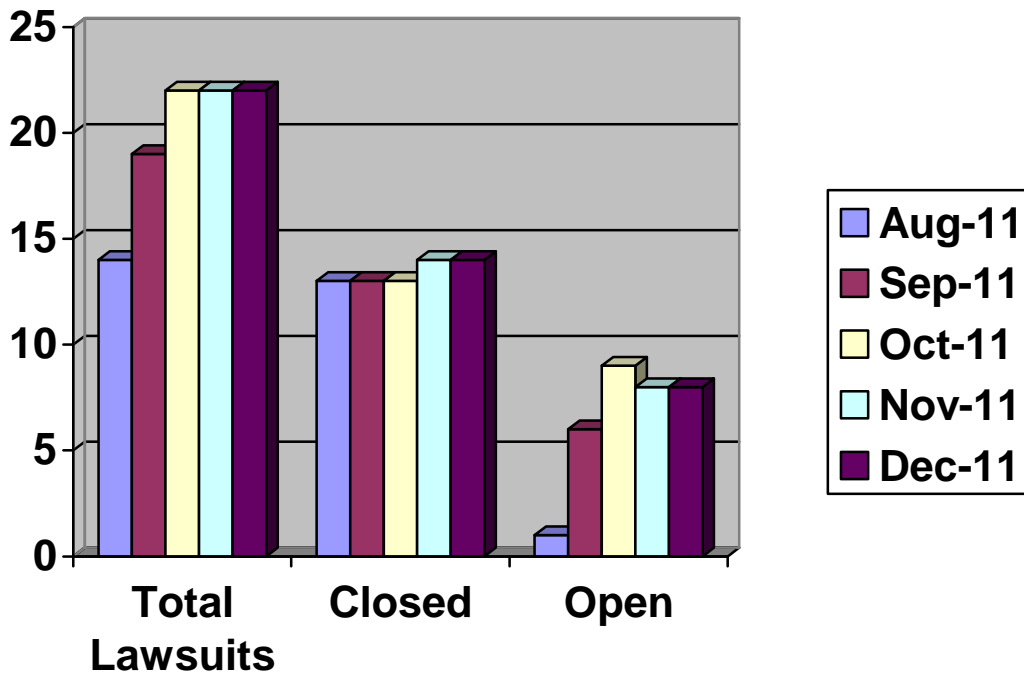
**TWIA Hurricane Dolly Litigation**  
**June 2011 through December 2012**





**TWIA Hurricane Humberto Litigation**  
**August 2011 through December 2012**

Date	Total Lawsuits	Closed	Open
August 2011	14	13	1
September 2011	19	13	6
October 2011	22	13	9
November 2011	22	14	8
December 2011	22	14	8



**Rates**

TWIA has implemented a five percent (5%) rate increase effective for policies on and after January 1, 2012. Chapter 2210 allows TWIA to file and use an annual rate increase of five percent or less; however, actuarial indications by TWIA would have supported TWIA filing for an additional twenty-two percent (22%) rate increase for residential policies and a twenty-nine percent (29%) rate increase for commercial policies above the five percent (5%) filed.

**Personnel**

Effective January 3, 2012, Mr. David Williams of Atlanta, Georgia became TWIA’s new Vice President of Claims. The position had been vacant since December 2010.

**III. Upcoming issues of possible interest to the committee members.**

**Rates**

At the direction of the Commissioner of Insurance, TWIA has issued an RFP to retain a consulting actuarial firm to provide independent input into TWIA rate needs. TWIA plans to

select a firm by the end of January, with the goal of having a rate analysis delivered in time to file for any recommended rate change to be effective July 1, 2012.

**Catastrophe Loss Preparation**

TWIA continues to work with the Texas Department of Insurance, the Texas Public Finance Authority, and the Comptroller's office to prepare for the 2012 Hurricane Season. TWIA's goal in working with these agencies is to establish lines of credit, develop other short-term financing instruments, and prepare for any contingencies that would arise should catastrophe losses require the issuance of public securities.

If you have any questions regarding this presentation, please feel free to contact me at 899-4949.