

Alabama insurance struggles: Disputes from tornadoes begin to gain traction

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Across tornado-affected areas of Alabama, thousands of property owners are grappling with insurers about how much money they are owed to rebuild.

Already, nearly 500 people have contacted the state Insurance Department. State regulators now expect around 90,000 claims because of April's storms, and even if the industry resolves 98 percent of them, there could be close to 2,000 disputes.

Many other people are likely to be left feeling burned, if only because they didn't understand what was in their policy. Lawyers and consumer advocates advise people to treat their claim like a business negotiation or buying a car, and not to settle for whatever an insurer first offers.

"There are a lot of people who don't dispute their claim that probably should," said Tina Nicholson, a lawyer for the Merlin Law Group. That Florida-based firm, which specializes in fighting insurers, has opened a Birmingham office to handle tornado disputes.

Alabama Insurance Commissioner Jim Ridling said that although insurers had trouble at first responding to the number of claims, things have improved. "The process, though bumpy in spots, is running pretty smoothly," he said last week.

Ridling said that initially, his department got inquiries about what a person's policy covered or complaints about slow insurer response.

Now, though, the calls come from policyholders who don't think insurers have offered them enough money.

In Alabama, disputes that linger will typically be resolved in one of three ways. Lawsuits could grind away for years, though a check last week of state and federal courts indicated no related actions as of yet.

Other claims will end in state-sponsored mediation or a little-publicized form of arbitration called appraisal that's included in most policies.

Still, even many people who get their money will be left asking, "Does it have to be this hard?"

Companies say that in part it's just how their process works, and in part they're trying to prevent fraud.

Frank Scafidi, public affairs director for the National Insurance Crime Bureau, said that the insurance industry traditionally says that 10 percent of property claims dollars paid out are obtained through fraud. Scafidi said the basis for that number, currently equal to about \$30 billion, is unclear.

The bureau, an industry-funded group based in Chicago that fights insurance fraud nationwide, said it can't say how much fraud occurs after disasters. However, Scafidi said, some people do try to milk their losses for more than they are worth.

"We do know that claim padding is a significant part of the fraud picture," he said.

But lawyers and customer advocates nationally warn that some big insurers are stingy claims-payers to boost profits, pointing to what they say is evidence introduced during insurance litigation in courts around the country.

"After every disaster, it's the same thing. People get low-balled. People receive misinformation. There are inexperienced adjusters and companies try to make money by denying claims," said Amy Bach, executive director of United Policyholders, a California-based consumer advocacy group.

Insurers strongly deny that they try to intentionally short their policyholders.

"I couldn't look my family in the face if I tried to do something like that," said Terry Blalock, a claims supervisor for State Farm Insurance Cos. who handles operations in Mississippi and Alabama. "State Farm does not ask us to do anything but handle the claims on their own merits and pay what we owe."

SUB No knowledge of policy

Ever since the April tornadoes left a \$3 billion-plus damage trail through Alabama, Ed Freeman, a Bessemer real estate attorney, has given free legal advice to victims through the Birmingham Volunteer Lawyers Program. He said that many policyholders know little about what their insurance covers until they suffer damage.

"Nobody knows what a policy says until they make a claim," Freeman said. "And even then, they still don't read it — they just file a claim."

A 2010 survey by the National Association of Insurance Commissioners showed only 41 percent of respondents said they felt knowledgeable when making insurance decisions.

For starters, tornado victims may have an insurance policy whose face value is too low to cover the cost of rebuilding a house. A firm that estimates rebuilding costs for insurers found in 2008 that 64 percent of houses in the United States are undervalued for insurance purposes.

But even if a company writes a check for the policy limit, industry officials say a homeowner can often get more. Most "replacement cost" policies will pay an additional percentage, often around 25 percent, to cover rebuilding costs. In addition, there's typically coverage to meet required building code upgrades,

the cost of hauling away debris and the cost of replacing destroyed landscaping.

“There are all these other pockets of coverage,” Bach said. “Don’t assume that check is all you can get. People almost never make you their best offer the first time.”

SUB Getting to replacement cost

For Alex Franklin of Harvest, the problem isn’t what his insurer, State Farm, will pay. It’s getting the money in hand.

Franklin is a program manager for a group that coordinates emergency medical services and trauma care in 11 Tennessee Valley counties. His one-story home on Elderberry Circle lost shingles from its roof. That let in rain, which damaged ceilings and wallboard, Franklin said, but the house is still livable.

The insurer estimated that the damage was worth \$18,000, but cut him a check for \$9,400.

That’s because insurance companies typically write checks for the depreciated or “actual cash value” of damage, withholding the rest of the payment until repairs are completed. The policyholder often pays for the rest of the work, then seeks reimbursement.

“The whole concept of depreciation and a hold-back comes as the biggest shock to a lot of people,” Bach said.

It didn’t come as a surprise to Franklin, who said he had the same experience after filing a claim for hail damage a few years ago. But Franklin said he’s having trouble getting State Farm to respond to his drywall estimates and is paying for the work out of his own pocket, a little at a time.

“I have to tread cautiously because I’m not sure what I’ll be allocated in the end. I have to work and plan and rebuild,” Franklin said. “State Farm is like dealing with a physician that won’t call you back with test results.”

Blalock, the State Farm claims supervisor, said the insurer has faced a heavy load of claims that has led to some delays, but is catching up.

Another problem with replacement cost can occur when an owner wants to leave a destroyed structure and start over elsewhere. The move typically makes them ineligible to collect on replacement value, though Ridling said some large insurers after the tornadoes agreed to pay the higher amount if a homeowner buys or builds a similar home nearby.

And there may be ways around the cash crunch created by the difference in depreciated and replacement values. State Farm, for example, says that if its policyholder presents a contract for the work and State Farm approves that deal, the insurer will start making payments for replacement value.

Blalock, the State Farm claims supervisor, said few people ever ask for that arrangement, though.

In general, lawyers and consumer advocates advise claimants to hire their own contractors or engineers

to assess damage and figure out how much repairs would cost. And insurance companies say that if people are unhappy with the company offer, they should seek outside advice.

SUB Your long list of stuff

Often, the last part of a claim that's outstanding will be payment for contents — all the possessions inside that were lost.

Linda White, who lives in St. Clair County's Shoal Creek Valley, said that she and her husband quickly got a check from Allstate Corp. for the house. But the company offered \$36,000 for contents lost.

Her policy, she said, had \$181,000 worth of contents coverage, but she doubts even that figure would be enough, given the valuable antiques, leather furniture and other items that were ruined.

The Whites became frustrated and have hired a lawyer, Alan Jackson, of Boaz.

"One of the frustrations is dealing with different adjusters," said Jackson. "When you complain about one they send another, then another, and hope you go away."

Many policyholders, however, do not know what they lost.

Consumers are typically advised to keep an inventory of all their possessions, or to at least walk through their house with a camera or video camera once a year, to take pictures. But few people do. That leaves victims picking through rubble, trying to come up with a list of how many pairs of socks they owned.

"People will tell me over and over and over again that the worst part of their loss was having to do their contents inventory," Bach said.

Insurers acknowledge that contents inventories can be emotionally trying.

"Unfortunately, those forms have to be filled out," said State Farm spokesman David Majors. "We don't know what you had in your house. We're putting the responsibility on you because it's your property. You tell us what you want to make a claim for."

Bach said that in some cases in California after a wildfire, insurers agreed to pay the limits of contents coverage without an inventory, and advised that victims ask to skip it.

"It never hurts to ask," Bach said. "If you don't ask, they're not going to volunteer."

SUB Options for a disputePeople who believe they haven't gotten what they are owed can complain to the Insurance Department, but Ridling said it's not the state's role to order an insurer to pay more in a specific case. If the department sees a pattern of underpayment, a company can be fined.

The department is likely to try to resolve disputes by setting up a mediation program in coming months, Ridling said, although he said he wants to give the regular claims process time to work.

A similar mediation after 2004's Hurricane Ivan handled hundreds of complaints, said Ragan Ingram, Ridling's chief of staff, and parties settled 90 percent of cases. Neither side gave up the right to sue, and

insurers paid for the process.

Policyholders can also avoid a lawsuit by taking their claim to a form of arbitration called appraisal. Industry officials say most policies allow each side to select a representative, and then the representatives or a local judge select a third participant called an umpire. The appraisers try to agree on the amount of damage. If they can't, they submit differences to the umpire for a decision. Both sides have to split the costs of appraisal, and the parties have to agree that the damage is covered by insurance.

Inevitably, some cases will end up in court.

By one count, more than 1,000 lawsuits against insurers were filed in Mississippi after Katrina, a storm that produced close to 500,000 claims in that state, according to regulators.

In Alabama, a 1998 lawsuit by a Coffee County cattle farmer resulting from 1995's Hurricane Opal was decided by the state Supreme Court in 2008.

"If you have battling engineers, and there's an absolute disagreement and the value of the loss is great — then there's no choice" but to get a lawyer involved, Freeman said.