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Insurance Companies Accused of Misguiding Claimants

Monika Gonzalez Mesa, Daily Business Review

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In the wake of Hurricane Irma, several attorneys and public adjusters who represent insurance policyholders are alleging that insurance companies and their agents are advising policyholders not to hire attorneys and public adjusters, an action that is not permitted under state law.

"In two hours yesterday we received three reports [saying a]policyholder was told not to hire a public adjuster or an attorney," said Nancy Dominguez, managing director of the Florida Association of Public Insurance Adjusters. "Insurance companies are not supposed to be telling people not to hire a public adjuster or an attorney."

Nevertheless, policyholders are being told that doing so will delay their claim, or that the lawyers and adjusters are "just going to take your money," Dominguez said.

Florida state codes restrict adjusters from advising insurance policyholders not to seek the advice of an attorney or public adjuster. A public adjuster handles claims and advocates for the policyholder in appraising and negotiating an insurance claim, while a company or independent adjuster represents the interests of an insurance company.

Dominguez said insurance agents and brokers have incentives to keep the ratio of claims to policy premiums low. Agents get bonuses for having lower loss ratios, Dominguez said.

One of the policyholders who was advised to avoid representation was a public adjuster calling in his own claim. Another was a former client of Daniel Alvarez, a partner at Property and Casualty Law Group in Kendall. The client said he had called his insurance company, Heritage Insurance, to report that the storm had taken the crest of his roof and knocked a tree on his house and car, bending the fence of his Kendall home. The client said the insurance company told him he didn't need an attorney or public adjuster.

Dominguez said she emailed a complaint to the Division of Financial Services, and on Friday received a call from a representative of Heritage Insurance who said the company does not instruct its call centers to advise people against hiring public adjusters. The representative asked for details about the call and promised to address the issue with the employee.

Tony Tinelli, a name partner at Mase Tinelli who represented insurance companies until switching to plaintiff work last year, said he handled thousands of claims on behalf of insurance companies that were underpaid or improperly applied exclusions. The policyholders ended up hiring public adjusters and attorneys "because they were being paid \$200 to repair a roof that needed to be replaced," he said, adding that, in hindsight, they would have been better off hiring them sooner.

"There's a difference between telling people not to hire someone and [telling them] they don't need to hire someone," said David Murray, a founding partner at Danahy & Murray in Tampa. "It's all in the delivery."

He said policyholders often want to discuss the damage with a public adjuster or lawyer before filing a claim with their insurance company so they can determine whether the damage exceeds their deductible. They also don't want to file a claim that will only serve to count against them in the future, as policyholders with more than two claims in three years, or three claims in five years may not be able to get insurance with some of the major insurance carriers, he said.

Insurance companies are quickly contacting policyholders via recorded messages and emails and inquiring if the policyholder wants to file a claim, in part so they can be in touch with the policyholder before they have had contact with an attorney or public adjuster who would advise them of their claim rights, Murray said.

Stephen Marino Jr., a shareholder at Ver Ploeg & Lumpkin in Miami who has represented storm-damaged law firms in litigation against insurance companies, said he would not be surprised to learn that insurance companies have told people to avoid representation. There have been plenty of instances over the years when insurance companies tried to steer people away from representation that would level the playing field between the insurance company and the claimant.

"The insurance company has an obligation to fairly evaluate and pay claims, and insurance companies hire claim professionals to do that," Marino said. "It's only fair, particularly in complex or sophisticated claims, for the policyholder to have a claim professional advocating their position. It would seem to me to be inconsistent with an insurance adjuster's ethical obligations to advise a policyholder that they should not obtain independent advice or representation."

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