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TEXAS TRIAL LAWYERS

OFFICES IN HOUSTON, BEAUMONT, AUSTIN AND SAN ANTONIO

September 23, 2010

To the Members of the Windstorm Insurance Legislative Oversight Committee

The Honorable John Carona, Co-Chair
The Honorable Robert Duncan
The Honorable Mike Jackson
The Honorable Leticia Van De Putte

The Honorable Larry Taylor, Co-Chair
The Honorable John Smithee
The Honorable Todd Hunter
The Honorable Ryan Guillen

Dear Board Members,

I write to inform and update many of you regarding recent action taken by the Co-Chair of this Board, Representative Larry Taylor of Friendswood. I express my concern today not only as an individual who pays for windstorm insurance, but also as an attorney for the over 10,000 families, churches, and businesses my firm represents who I am copying on this letter.

Co-Chair Larry Taylor, using his legislative power, wrote Texas Windstorm Insurance Association ("TWIA") requesting information on 2,400 families whose homes were completely destroyed during Hurricane Ike.¹ These cases are commonly referred to as "slab" cases because after Hurricane Ike hit, there was nothing left of their homes, but the slab foundation.

Rep. Taylor's wholesale request for information sought the names, settlement amount, and personal and private information contained in the claims files of these 2,400 families. These claims files contain highly private information such as tax returns, credit card records and possibly medical records.

Rep. Taylor's request came almost two years after Hurricane Ike made landfall, but what prompted it? Not years of newspaper and television stories. Not hundreds of lawsuits filed by homeowners. Not calls from fellow legislators. Not TDI investigations. Not even community outrage. Rep. Taylor's request came immediately after an insurance industry-backed, anti-consumer group failed in its attempts to get the very same information. Texans for Lawsuit Reform, a special interest, anti-consumer rights group, tried to get this same private information

¹ Exhibit 1, Representative Taylor's letter to TWIA, Sept. 8, 2010

from TWIA's lawyers just weeks before Rep. Taylor sent his request. The details behind this sequence of events are specifically set out in the attached pleading.²

I owe to my clients a duty to protect their personal, private and confidential information. The information sought by Rep. Taylor is protected by United States constitutional rights to privacy, the Texas Constitution, Texas statute, and the Galveston County standing pretrial order and Protective Order which govern all Hurricane Ike claims filed there.³ To prevent the unrestricted release of private information, I was forced to file a temporary restraining order and seek an injunction preventing Mr. Taylor's improper request. There has been wild speculation that my law firm (which supports over 150 employees in 5 locations) earned fees on the entire amount of the reported slab settlement. This is untrue. I and my firm represent only a small percentage of these families. However, I have an obligation to my clients to protect their private information. As liaison counsel on Hurricane Ike cases to the Galveston County District Court, I have an obligation to all TWIA policyholders to protect their private information.

Rep. Taylor has stated that he was acting in his official capacity as the Co-Chair of this Board when he made his request to TWIA.⁴ This came as a surprise to the newly appointed Co-Chair, Senator John Carona. He has publicly called the request inappropriate.⁵ When asked to comment on Rep. Taylor's request to TWIA, Sen. Carona responded by stating, "I received no notification from Rep. Taylor that he would be contacting TWIA for the information now in question, nor was it discussed with me in any fashion."⁶ Sen. Carona went on to say, "This was certainly not a committee action."⁷ While the enabling statute of this Board would arguably allow this board to request certain information, the statute specifically limits that right to the "Board." Rep. Taylor's request was made solely by him. There is no record of any public meeting of this board or no meeting posted as would be required by the Open Meetings Act. Further, there was no vote by the Board to make this request.

The Court, on behalf of my clients and the clients of almost one hundred other attorneys representing these 2,400 families, granted the restraining order precluding TWIA from releasing the requested information.⁸ A follow-up injunction hearing is set for Monday, September 27, 2010.

² Exhibit 2, File-Stamped Copy of Plaintiffs' Application for Temporary Restraining Order filed in response to Representative Taylor's request

³ Exhibit 2-A, Galveston County Pretrial Standing Order and Protective Order

⁴ Exhibit 3, Elise Hu, *Taylor "Can't Believe Firestorm" Over TWIA Request*, The Texas Tribune, Sept. 10, 2010. <http://www.texastribune.org/>

⁵ Exhibit 4, Jason Embry, *Carona Calls Taylor Request Inappropriate*, Austin American-Statesman, Sept. 13, 2010

⁶ Exhibit 4,

⁷ Exhibit 4.

⁸ Exhibit 5, Order granting Plaintiffs' Application for Temporary Restraining Order

Rep. Taylor has now withdrawn his original request made under the color of this Board. He recently submitted a new request to TWIA.⁹ This second request was done under the authority of the open records statute. That statute allows a citizen access to certain public information, but balances the public's need for information against the potential harm that could be caused by the information's release. These 2,400 families have a right to be left alone. Once their private information is released, it will never be private again. Under the open records request their privacy should not be violated.

This change in the type of request made by Rep. Taylor is strange- is the information needed for this Board's legislative report as originally asserted? If so, then why is it now being sought under a general public records request? And why is Rep. Taylor offering to personally pay copy and processing costs?¹⁰

This Board was created in House Bill 4409 in the 2009 legislative session. The bill created two Co-Chairs, one in the House and one in the Senate. The Board was tasked with overseeing windstorm insurance in the State of Texas. A review of the public record indicates that this Board has never met, has never requested any information and has never conducted any inquiries. If the Board so desires and would indicate to me what information is needed, I would be happy to cooperate with that request, as long as the requested information does not invade my client's privacy rights. I would do this because I feel that windstorm insurance in Texas needs strong oversight.

However, Rep. Taylor requests the wrong information too little, too late. For the last two years, the families whose private information he seeks to expose have had **NO HOME** to visit or live in. For the last two years, these families have gone it alone, with only the legal system and their attorneys advocating on their behalf. Where was Rep. Taylor during these long two years? The stories of these families' struggles with the insurance companies have been well documented in newspapers across the State and in particular in the Galveston County Daily News and the Houston Chronicle. Both of these newspapers are delivered to Rep. Taylor's district. Numerous new stories ran on local television stations broadcast into Mr. Taylor's district. Why now, Rep. Taylor?

Hints of claims mishandling by TWIA could be seen in the media just after the storm. "I'd rather have no complaints, but sheer numbers would dictate percentage wise that you get a number of complaints," TWIA told KRPC Local reporters. This was during an investigation on the number of Texas Department of Insurance ("TDI") complaints filed by homeowners against TWIA for mishandling their Hurricane Ike claims.¹¹ In an effort to shed light on the mounting

⁹ Exhibit 6, Larry Taylor Open Records Request to TWIA

¹⁰ Exhibit 7, Jason Embry, *Lawmaker Submits New Request for Ike Information*, Austin American Statesman, Sept. 17, 2010

¹¹ Exhibit 8, KRPC, *Local 2 Investigates Insurance Woes Following Ike*, Transcript, Jan. 13, 2009

delays TWIA policyholders were facing after Ike, The Galveston Daily News ran a story entitled “Thousands Still Awaiting Windstorm Payouts”.¹² When TWIA was faced with accusations that improperly trained adjusters were to blame for the delay in paying claims, it responded, “There is a learning curve, some of them were not the greatest-they’re not terrible-and when that happens you end up with a second and even a third look at the property.”¹³ Any investigation at this early stage may have helped thousands, yet Rep. Taylor called for no investigation.

Over 100 frustrated TWIA policyholders took their dissatisfaction with TWIA’s claims handling to its Austin headquarters on March 13, 2009. “You have a lot of local people down here that would have been back to work 5 1/2 months ago if it hadn’t been for TWIA stalling our claims,” one frustrated policyholder expressed to a Houston Chronicle reporter.¹⁴ On April 23, 2009, The Galveston Daily News ran a story on seven local churches that were forced to file lawsuits against TWIA for mishandling their Hurricane Ike claims.¹⁵ Any legitimate concern Rep. Taylor might have had for the way TWIA was handling its claims would have surely been expressed after stories like these hit the press. No such inquiry was made.

By August 31, 2009, TDI complaints against TWIA for Ike-related claims accounted for more than half of all Ike complaints filed with the department.¹⁶ The plight of the TWIA policyholder was well known and well covered in the local media by now.¹⁷ Despite almost daily reports in the news of TWIA’s improper claims handling procedures, Rep. Taylor did nothing to investigate the allegations. However, another Texas lawmaker did call for an investigation into both TWIA and its oversight by TDI. When Senator Rodney Ellis reviewed a lawsuit filed in November of 2009 extensively detailing bad faith claims handling practices, he issued a written statement to The Houston Chronicle. “The documents demonstrated a callous attitude toward insured families of the Texas Coast. These documents demonstrate a pattern of deception resulting in wrongful underpayment of Hurricane Ike claims by TWIA.”¹⁸ Alex Winslow, head of Austin-based consumer group, Texas Watch, said, “As more becomes known about how TWIA handled claims after Ike, it becomes more and more apparent that there is a lack of professionalism at TWIA and that there is a culture that does not respect policyholders.”¹⁹ Local news station KHOU followed up on the accusations laid out in the November 2009 lawsuit, resulting in a scathing story.²⁰ Not only did Rep. Taylor have an entire year’s worth of

¹² Exhibit 9, Laura Elder, *Thousands Still Awaiting Windstorm Payouts*, The Galveston Daily News, Feb. 15, 2009

¹³ Exhibit 9

¹⁴ Exhibit 10, Purva Patel, *Hurricane Ike Aftermath*, Houston Chronicle, March 13, 2009

¹⁵ Exhibit 11, Laura Elder, *Churches Suing State Windstorm Insurance Pool*, The Galveston Daily News, April 23, 2009

¹⁶ Exhibit 12, James Shannon, *Under Fire, State Charges TWIA*, The Examiner, Sept. 14, 2009

¹⁷ Exhibit 12

¹⁸ Exhibit 13, Purva Patel, *Lawsuit says State Insurer Rigged Process*, Houston Chronicle, Dec. 2, 2009

¹⁹ Exhibit 14, Purva Patel, *New Round of Criticism Hits Windstorm Insurer*, Houston Chronicle, Dec. 2, 2009

²⁰ KHOU Investigative News Story, Video <http://www.khou.com/video/featured-videos/Legislator-wants-investigation-of-Texas-Windstorm-Insurance-Association-69620672.html>

coverage to support a legislative probe into TWIA's claims handling procedures after Ike, a State Senator had publicly called for such an investigation. Yet once again, Rep. Taylor did nothing.

How did Taylor's inaction in the face of such evidence harm TWIA policyholders? TWIA policyholders were named as "Losers of 2009" by the Houston Chronicle on its yearly list of notable winners and losers in the Gulf Coast region.²¹ The Chronicle identified, "internal emails show a pattern of the Association underpaying, denying and delaying legitimate Ike-related claims," as just one of the factors leading to the dubious award given to TWIA policyholders in its article.²²

On July 10, 2010, TDI issued a report²³ substantiating the numerous allegations contained in the pleadings reviewed by Sen. Ellis and hundreds of other homeowners' lawsuits, reported on by numerous news outlets, and contained in TDI complaints filed by TWIA policyholders.²⁴ In addition, it is publicly known that TDI is currently investigating and prosecuting claims that TWIA dealt with homeowners in bad faith generally, but also specific violations such as underpaying homeowners on "overhead and profit" and failing to pay to replace lifted shingles. I raise the issue of this widely available information to address my sincere concern that despite the sheer volume of media coverage and community concern, Rep. Taylor, as Co-Chair of this Board, has never once to my knowledge requested a single piece of information from TWIA, TDI or any other insurer requesting **why** these claims still remain unpaid years after the storm.

I share the concerns of my clients and other policyholders regarding why no such action has been taken by Co-Chairman Taylor for almost two years. I have serious concerns over why the only action being taken now is to question these specific 2,400 families whose homes were totally destroyed. They were finally paid a portion of the amount it costs to repair their destroyed homes. Now, they are being singled-out as if these families have not endured enough. As if these families deserve further harassment.

I am requesting a public hearing on behalf of myself, the other attorneys involved and the families affected to discuss questions about past failures of TWIA and looming problems on the horizon should another storm hit the coastal areas which TWIA insures. At this hearing, I believe the following topics should be considered:

1. Why does the State allow the for-profit Insurance Companies to hide behind TWIA and abrogate their responsibilities to this State?

²¹ Exhibit 15, Loren Steffy, *Win, Lose or a Little of Both*, Houston Chronicle, Chron.com, Dec. 26, 2009

²² Exhibit 15

²³ Exhibit 16, TDI Audit of TWIA

²⁴ *Khattak v. TWIA*, 6th Amended Petition. <http://www.MostynLaw.com/media/media-news.asp?offset=10>

2. Why was TWIA, whose Board is made up of and controlled by the for-profit carriers, so completely unprepared for the claims from Hurricane Ike?
3. Why did the problems set out in numerous newspaper articles, lawsuits and TDI investigations and findings go without investigation from Rep. Taylor as the Co-Chair of this Oversight Board?
4. Is it appropriate for the Co-Chair of this Board to directly profit from the sale of TWIA Insurance policies? Larry Taylor is the owner of the Truman Taylor Insurance Agency and earns his living, in large part, as an agent selling policies for the very company (TWIA) he is supposed to be regulating.²⁵
5. Why does TWIA pay insurance agents, such as Rep. Taylor, a 16% commission on the sale of its policies when the industry standard is 10% or less?
6. Why does TWIA prohibit policy renewals against industry standard practice? Instead, TWIA requires that a new policy is issued after each policy period. This results in the payment of an additional 16% commission on every policy paid to agents like Rep. Taylor. The industry standard practice results in commissions of less than half of that on renewals.
7. Why doesn't TWIA adopt the industry standard on commissions paid to agents like Rep. Taylor and save policyholders \$46 million dollars? When you add the difference between the 16% commission on a new policy versus the industry standard of 10% with the difference between the 16% commission on renewals versus the industry standard, TWIA pays \$46 million dollars more than other insurers would.
8. Why increase rates on homeowners when you can decrease commissions to agents like Rep. Taylor and still save money? The Texas legislature, including Rep. Taylor, voted to allow TWIA to increase premiums on coastal residents by ten percent, resulting in \$42 million dollars in additional premiums collected from families, churches and businesses on the Texas Gulf Coast *each year*.
9. What justification does TWIA have for paying substantially higher commissions to agents, like Rep. Taylor, than what is paid by the major carriers when TWIA is *the only option available* to Gulf Coast businesses and residents. In other words, it's easier to sell a TWIA policy, not harder. Why should agents like Rep. Taylor make *more* money doing it?

²⁵ Exhibit 17, Representative Taylor's TDI License

10. Was any member of this Board notified that Rep. Taylor was to request information on behalf of the Board before the request was made? Was any member told for what purpose the information was needed?
11. Why was the new Co-Chair, Senator John Carona, not notified of Rep. Taylor's request and has this Board ever discussed this topic and the need for this information for the purported purpose of the creation of a November 15th report?
12. What is the purpose behind Rep. Taylor's request for attorneys fees paid to *individual* attorneys?
13. Why were the victims of Hurricane Ike forced to file lawsuits? The answer is clear. Insurance companies know that only a small percentage of homeowners will end up hiring a lawyer. So they continue, like TWIA, to employ the "underpay and hope they go away" strategy. For example, TWIA told its adjusters to only pay to reseal shingles as a last resort, when the insurer will not go away.²⁶ Unfortunately, the deck is stacked against the homeowners of Texas and filing a lawsuit is the only way for them to get paid what they are owed.

Members of the Board, I look forward to working with you. Homeowners insurance rates in Texas are some of the *highest* in the nation. The clients I represent have a compelling interest in lowering homeowner's insurance rates in Texas. The clients I represent have a compelling interest in making sure that no victims of future storms experience the same treatment that my clients endured

Sincerely,



J. Steven Mostyn

cc: Mostyn Law Firm TWIA Clients

²⁶ Exhibit 18, TWIA Internal Email