

Attorneys object to Citizens' water damage fraud allegations

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Jan. 16--Fraud.

To hear officials of Citizens Property Insurance Corp and their allies in Florida's insurance industry talk, fraudsters in South Florida are about to destroy the homeowner insurance market for everyone by driving costs to unsustainable levels.

Water damage claims from the tri-county area -- resulting mostly from broken pipes -- are to blame, they say. At Citizens board meetings, state legislative workshops and across the media, fingers point at South Florida:

Shady attorneys are working with water damage cleanup firms, plumbers and public adjusters to falsify claims, hire professionals to perform unnecessary work and file expensive lawsuits, the insurance industry says.

Counters attorney Imran Malik, an Orlando-based attorney who has represented South Florida plaintiffs in 185 suits against Citizens over the past six years: "It's tiring to hear everything is fraud when it costs the insurance company money and everyone is the bad guy except them."

Neither Citizens nor its allies have produced statistical evidence proving repeated allegations of widespread fraud. Instead, they say fraud must be the reason for the increase in claims because they haven't found any other reason.

"When you take a look at Miami-Dade and you take a look at the rest of the state, there's really no major differences in age of home, or frankly, virtually any other characteristic," Citizens president and CEO Barry Gilway said in August. The obvious conclusion, he said, "is there's more fraud."

In October, Citizens released charts showing that non-weather-related water damage claims represented 56 percent of all claims in 2014. Statewide, 24 percent of such claims were represented by attorneys when Citizens first learned of them. Seventy-two percent came from Miami-Dade, Broward and Palm Beach counties. In the tri-county area, 93 percent of all claims were represented by attorneys. Of 562 suits filed against Citizens in December 2014, 98 percent originated from the tri-county area, and 91 percent involved non-weather-related water damage.

Payouts for claims fought in court are averaging \$27,631 compared with \$9,028 for non-litigated claims, Citizens budget officials said in December.

Those statistics were blamed for rate increases in South Florida for 2016 while the rest of the state saw decreases. They were also cited to justify policy changes approved last month by

Citizens' Board of Governors that would reduce homeowners' ability to file water damage claims, seek reimbursement for losses and hire contractors to perform emergency repairs.

If fraud has been increasing over the past eight years, it's not clear from statistics maintained by the state Division of Insurance Fraud. Of 106,743 suspected criminal cases referred to the division between 2007 and 2014, less than 5 percent -- 4,935 -- involved homeowner insurance, according to the division's most recent annual report.

Several South Florida attorneys with hundreds of lawsuits against Citizens and other insurers bristle at the accusation they are running a fraudulent cottage industry.

South Florida residents with water damages have learned to let repair companies, public adjusters and legal experts handle the fight to get Citizens to restore them to their pre-loss condition, said Miami attorney Anthony M. Lopez, who has filed more than 1,380 suits against Citizens since 2010.

Policyholders seek help from experts because "policies have gotten longer and more complicated," he said. "It's very difficult for someone who isn't trained or doesn't have a legal background to determine what's covered and what isn't covered," he said.

The attorneys defended a practice that has become a hated target of the insurance industry -- assignment of benefits. That's a clause in a policyholder's contract with a damage repair firm that gives the repair firm the right to stand in the policyholder's shoes and solicit payment from the insurance company through invoice or litigation.

It's a valuable tool because it enables contractors to start work while insurers investigate claims, Malik said.

Prior to assignments of benefits becoming common in homeowner insurance claims, "a water intrusion contractor would come out and get you to sign a contract, including a notice of lien saying the insured was responsible to pay for their services," Malik said. "The insured would submit bills and the insurance company would determine they were too high and leave the insured holding the bag."

Homeowners don't want to sue their insurance companies, said Kenneth R. Duboff, a North Miami attorney who filed more than 2,400 suits against Citizens since 2010. "With an assignment of benefits, contractors say, 'We work for you. If the insurance company doesn't pay, we're going to sue the insurance company.'"

Eliminating assignment of benefits, Malik said, "would put the policyholder back in the crosshairs."

The insurance industry has tried and failed over the past three years to enact legislation that would sharply restrict policyholders' rights to assign benefits. Failure is blamed on trial attorneys and their allies in the state legislature.

Hollywood-based attorney Ely R. Levy, who has filed more than 550 suits against Citizens since 2010, said, "If fraud is an issue, they have the tools to deal with that. They have discovery tools during the litigation process to show these aren't valid claims and shouldn't be paid."

The attorneys say that while some fraud occurs and always will, insurers' contentions that water damage claims are steeped in fraud is meant to shroud the fact they don't want to pay legitimate claims.

Several of the attorneys point to South Florida's aging housing stock as driving the high number of water damage claims. High rates of deterioration are seen in homes built with cast iron drainage pipes prior to the early 1970s, when the industry converted to polyvinyl chloride -- or PVC -- materials.

"Cast-iron pipes have a 40- to 50-year life expectancy," said Miami attorney Joseph W. Ligman, who has filed more than 1,200 suits against the top 25 insurers over the past six years. "In our area, there's more cast iron, more salt water, more moisture. Sometimes the leaks occur under the house. It creates a vapor barrier, increases humidity in the house, heightens bacteria levels. Drains back up through the dishwasher or washing machine."

Said Levy, "There isn't a policyholder conspiracy to create water losses."

After noticing an increase in water damage claims between 2006 and 2008, Citizens analysts in 2009 recommended developing a mapping software program to "identify and track unusual clusters or 'hotspots' of claim activity." They also said the company would release bimonthly reports of "suspicious referrals, including water-related fraud."

But the company never released reports of water-related fraud. In December, it released its first maps showing that the most expensive water damage claims originate from Miami-Dade and southern Broward. Whether geology, weather, salt levels, or construction characteristics play a role has not been studied.

A clearer picture might be forthcoming, however, after a promised analysis by the state Office of Insurance Regulation of detailed information about every water damage claim between 2010 and 2015 by Citizens and the rest of Florida's 25 largest property insurers.

A major motivation for the increase in lawsuits, Citizens and its industry allies say, is that state law allows attorneys in a claims dispute to collect legal fees from insurance companies, but bars insurers from collecting if they prevail. In an October statement, the Florida Chamber of Commerce said the provision "emboldens" plaintiffs to inflate bills and collect "potentially unwarranted" attorneys fees.

Plaintiffs' attorneys, however, say defense attorneys who represent Citizens often generate billings far in excess of what a claim would cost to settle. "We litigate a lot of cases because they refuse to pay fair value at the beginning," Ligman said.

In December, Citizens' Board of Governors approved spending \$65 million on defense lawyers.

Another reason for the increase in water damage suits is Citizens has changed the rules in recent years to reduce its exposure to losses, the attorneys said.

Duboff said he started filing more lawsuits against Citizens after the company in 2009 changed policy language to allow it to opt out of the appraisal process, in which appraisers for insurers and policyholders each come up with estimates of the damage and jointly choose an umpire to make a binding decision.

Lawsuits also increased after Citizens stopped covering repairs in 2009 for water leaks that were "previously unknown and hidden to the insured" and denied claims for leaks more than 14 days old. Most other insurers followed suit. "Now we have to determine how long the leak has been going on" -- which requires litigation, Duboff said.

And Citizens is the only insurer protected by state law from lawsuits claiming adjusters operated in "bad faith," said Anthony M. Lopez, a Miami attorney who has sued Citizens more than 1,380 times since 2010. The immunity "allows Citizens to adjust claims any way they see fit, whether it's appropriate or not," he said.

All of the attorneys interviewed acknowledge that abuses exist and there are "bad actors" among water damage repair companies, attorneys and policyholders.

But they say the insurance industry should deal with those problems individually, rather than with wholesale rule changes that will hurt policyholders across the board.

"At the end of the day, an insurance company doesn't have to pay a claim they think is illegitimate," Lopez said.

"But more often than not, they're not paying claims that should be paid."

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