



## **Texas Department of Insurance**

**Financial, General Management**, Mail Code 305-2A  
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September 30, 2011

John Polak, Interim General Manager  
Texas Windstorm Insurance Association  
5700 S. Mopac, Bldg. E, Suite 530  
Austin, TX 78749

**Via Hand Delivery**

Re: Amended Administrative Oversight

Dear Mr. Polak:

This letter supersedes my letter of February 28, 2011 and sets forth amended terms and conditions for administrative oversight of the Texas Windstorm Insurance Association ("TWIA") by the Texas Department of Insurance ("TDI"), pursuant to § 441.053 of the Texas Insurance Code, and in conjunction with all applicable law.

1. TWIA management shall continue to submit all senior and executive level personnel decisions to TDI staff for prior review and approval.
2. TWIA management shall continue to submit expenditures for review and prior approval. Revised expenditure request guidelines are set forth in attached Exhibit 1.
3. TWIA management shall comply with the attached communications plan which requires complete, accurate, and timely communications to the Board to ensure that the Board can meet its primary objectives, as set forth in § 2210.107 of the Texas Insurance Code, and any and all other responsibilities under Texas law. TDI shall be copied on the bi-weekly report to the board. The Board shall consider adoption of an appropriate communications plan at its next meeting.
4. TWIA has submitted an Operations Improvement Plan (the "Plan") designed to address operational deficiencies and compliance issues identified by TDI and TWIA staff. TWIA shall continue its efforts to implement the Plan as written and as it evolves with input from TDI staff. In order for TDI to evaluate TWIA's progress in implementing the Plan, TWIA shall report to TDI as set forth in Exhibit 2.
5. TWIA shall continue to document all claim settlements as previously directed by TDI and to submit such documentation for review as set forth in Exhibit 3.
6. TWIA shall account for its reinsurance and reinstatement premium as directed by TDI.
7. TWIA shall amend its 2008 Annual Statement and all subsequent annual statements as directed by TDI.
8. TWIA shall engage a third party consultant acceptable to TDI to conduct an audit of TWIA's IT expenditures, operations and planning.

9. Norma Garcia was named as a special advisor for TDI on ethics and compliance issues related to TWIA effective September 19, 2011. Ms. Garcia will remain on site at TWIA until TWIA is released from administrative oversight. TWIA should view Ms. Garcia as a resource regarding matters of transparency, accountability, conflicts of interest, and the like, in TWIA's practices, policies and procedures.
10. In order to evaluate proposed transactions and major issues, TDI will conduct regularly scheduled conference calls with TWIA management to address upcoming matters, problems or issues.

Pursuant to the authority set forth in Chapters 401 and 2210 of the Texas Insurance Code, any information and documentation obtained by TDI in connection with this administrative oversight proceeding will be treated confidentially to the extent provided therein.

Nothing in this letter relieves TWIA of its obligation to comply with all applicable law. Nothing in this letter ratifies any action taken by TWIA, or by its management or staff, nor does it express the Commissioner's or TDI's approval of any such action, nor does anything in this letter prevent the Commissioner or TDI from initiating any proceeding, taking any action, seeking any remedy, or pursuing any right at any time.

Sincerely,

Eleanor Kitzman  
Commissioner of Insurance

By: \_\_\_\_\_  
Danny Saenz  
Senior Associate Commissioner  
Financial Program  
Commissioner's Order No. 10-1088

c: TWIA board members  
Danny Saenz  
Sara Waitt  
Angel Garrett  
Jamie Walker  
Rachel Giani

## EXHIBIT 1

### Expenditures

No expenditure of TWIA funds, whether in cash, by check, credit card, wire transfer, or other form of payment, shall be made without prior approval by TDI and/or as set forth herein. All expenditure requests must be in writing and shall include the detail described below, as well as a recommendation signed by a senior level **employee** (non- contractors or consultants) of TWIA familiar with the proposed expenditure.

Specifically, the following information is to be provided for each type of expenditure:

#### **Non-claims checks (including legal bills):**

1. A log of all checks that are printed during each day.
2. TDI staff may select checks for review prior to release to the payees. TWIA shall not release any checks until informed by TDI staff of the checks to be reviewed prior to release.
3. For the checks that are selected for review prior to release, TWIA shall provide TDI staff the unsigned check, the completed disbursement form used by TWIA, the invoice or billing statement supporting the amount of the payment, a copy of any associated contract or agreement, and any other information requested to facilitate its evaluation of the disbursement.
4. A log of upcoming checks at least one week prior to the due date of the payment;

#### **Non-claims wire transfers:**

1. Email notification including the documentation that supports the payment of the liability, including the completed disbursement form used by TWIA, the invoice or billing statement supporting the amount of the payment, and a copy of any associated contract or agreement.
2. All wire transfer requests shall be made by TWIA at least one week prior to the due date of the payment;

#### **Claims payments:**

1. Daily Claims Check Report and the accompanying daily Claims Check Run Log Excel Spreadsheet. The contents of these reports shall not be changed without prior approval by TDI staff.
2. Access to the NOTUS system by TDI staff.
3. All claims payments of \$100,000 or greater will be reviewed by TDI staff prior to the checks being released to the payees.
4. TDI staff will notify TWIA which, if any, of the less than \$100,000 claims checks have been selected for review prior to release. TWIA shall not release any checks that have been selected for review until TDI staff has provided their approval;

#### **Other:**

1. With regards to expenditures with third parties who have withdrawal authority on TWIA accounts, such as the 401K and payroll administrators, and credit cards, provide all necessary

documentation needed by TDI staff to review such payments at least a week ahead of the scheduled withdrawal. All of these types of disbursements will be reviewed by TDI staff.

2. Contracts that are not the standard pre-approved contracts shall be submitted for review by TDI staff prior to execution.
3. If an expenditure is determined to be appropriate and has been properly documented, TDI will provide a statement of non-objection within 2 business days of receipt, allowing TWIA to make the proposed expenditure or complete the proposed transaction. TDI staff may also select disbursements after they have been released to payees to verify that TWIA is following its processes and procedures.
4. For routine, recurring expenses, TWIA may submit the name and address of the payee and the usual amount or range of the amount of the recurring payment. If approved by TDI, these expenditures may be processed and transmitted without additional prior approval by TDI; provided, however, that TDI is notified within 48 hours of the payment. TDI may review these disbursements after they have been made to verify that TWIA is following its processes and procedures.
5. TWIA shall provide TDI with a list, including name, address, telephone number and a contact name, if appropriate, of all vendors with whom TWIA does business, including consultants, contractors, suppliers, etc. No expenditure shall be approved by TDI unless the vendor information has been provided to TDI in advance.

EXHIBIT 2

General Reporting

In order to facilitate monitoring of implementation of and compliance with TWIA's Operation Improvement Plan, TWIA will provide the following information to TDI:

1. Monthly status reports regarding TWIA's implementation of the Plan. The format of the reports will reference the unique identifier used in the Plan and provide a detailed discussion of that item and any new supporting documentation for that item. The status report is due the first working day of each month.
2. Monthly financial statements, presented in the format of pages 1-5 of the NAIC blank. The financial statement shall be provided to TDI staff by the 15<sup>th</sup> of the following month.
3. Any instances of non-compliance with TWIA's policies and procedures should be reported to TDI staff immediately.
4. Daily cash report.
5. Mass employee communications shall be copied to TDI staff when distributed.
6. TDI staff shall continue to be notified of media inquiries and any articles, op-ed columns, letters to the editor, and the like shall be submitted to TDI prior to submission for publication.

EXHIBIT 3

Settlement of Litigated and Non-Litigated Claims

1. TDI has developed a spreadsheet for all claim settlement information related to both litigated and non-litigated claims. TDI will provide the spreadsheet electronically to TWIA, and TWIA shall update the information on at least a daily basis starting from October 3, 2011.
2. TWIA shall place the spreadsheet provided by TDI on a shared system that will allow TDI access to the claim settlement information at any time.
3. The claim settlement data collected through the spreadsheet shall include, but is not limited to, the following: claim number, claimant name, date of loss, date of first notice of loss, date suit filed (if applicable), plaintiff firm (if applicable), plaintiff's estimate or demand (if applicable), name of public adjuster, upper end of recommended settlement range, amount of prior payments on the loss, amount of prior expenses paid, amount of reserves, amount of total remaining policy limits, date of formal mediation or proposed informal negotiation, TWIA rating, names of independent adjusting firm and independent adjuster, date of final settlement, final settlement value, and zip code of risk. The additional data to be collected is set out in detail in the template spreadsheet to be provided by TDI.
4. TDI staff will review prior to the settlement negotiations claim settlement packets for the following claims: all claim settlement packets for claims with total settlement ranges of \$100,000 or more (including prior payments on the loss and any requests for additional authority); and claim settlement packets for claims selected by TDI staff with a settlement range of less than the \$100,000 threshold.
5. Prior payments to the claimants on the loss shall be included in calculations to determine whether the settlement value reaches the dollar threshold triggering TDI staff's review prior to settlement negotiations.
6. In the future, TDI staff may choose to review only those packets for claims with recommended settlement ranges over \$250,000.
7. All settlement packets associated with claims exceeding the dollar threshold triggering TDI staff's review shall be provided at least a week before the proposed mediation/informal negotiation.
8. All settlement packets that are selected by TDI staff for review which are less than the dollar threshold triggering TDI staff's review shall be provided to TDI staff within 2 days of TDI staff selecting the claim for review prior to settlement negotiations.
9. The settlement packets submitted to TDI staff related to settlements that are being reviewed shall continue to contain the information relied on to settle the claims, which should be substantially similar to Forms C01 and C02, as previously developed jointly by TDI staff and TWIA. That

documentation includes, but is not limited to, the claim settlement review form, the examiner write-up/summary, the defense counsel evaluation (where applicable), and other supporting documents. The materials supporting the settlement shall also include the recommended settlement ranges determined by TWIA's examiner and defense counsel, the amount of reserves, the name of the adjusting firm and the independent adjuster, and a list of documents received from plaintiff.

10. TDI and TWIA will collaboratively develop a revised claim settlement review form which will reflect whether the claim settlement packet was reviewed by TDI.
11. TDI staff reserves the right to review any claim settlement packet either before or after the settlement negotiations occur to verify that the information being maintained by TWIA related to any settlement is complete and complies with TWIA's processes and procedures. Therefore, TWIA shall continue to compile all of the settlement documentation as outlined above for each claim to ensure completeness of their own files.