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OPINION COMMITTEE



TODD HUNTER

TEXAS HOUSE OF REPRESENTATIVES

DISTRICT 32

NEEDES (PART)

Attorney General of Texas
Greg Abbott

Austin, Texas

RQ-1134-GA FILE # ML-47318-13
I.D. # 47318

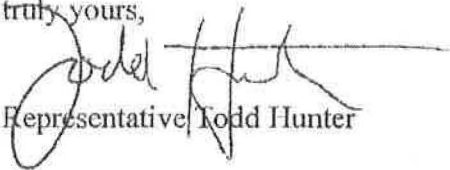
Dear General Abbott:

I request an Attorney General Opinion on the following issues. Attached is a copy of a letter dated March 24, 2013 that was signed by Representative Joe Deshotel as well as Representatives Eiland, Hunter, Lucio, Herrero and Ritter. I request that the attached letter be reviewed in connection with my request for an Attorney General Opinion.

1. Since Texas Windstorm Insurance Association (TWIA) has and/or had the authority to assess insurance carriers pursuant to Texas law as set forth in the attached letter, is it negligence and/or failure of authority or responsibility of duties by the TWIA organization, TWIA Board and/or Texas Department of Insurance to not make said assessments? For your information, the Opinion involves the Texas Department of Insurance because of their oversight responsibilities of TWIA.
2. Is there any provision of the Texas Insurance Code that would prohibit TWIA from using future premiums to pay prior obligations if all available funding had been exhausted by an event or series of events?

We request this Opinion at your convenience. In addition, I can arrange a meeting to provide all documents and information related to said request for an Opinion. Please let me know if a briefing would assist you in this matter.

Very truly yours,


State Representative Todd Hunter

Attachment

cc: Representative Joe Deshotel
Representative Craig Eiland
Representative Abel Herrero
Representative Eddie Lucio III
Representative Allan Ritter



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STATE of TEXAS
HOUSE of REPRESENTATIVES

JOE DESHOTEL

Texas State Representative
22nd Legislative District

March 24, 2013

Ms. Eleanor Kitzman
Commissioner
Texas Department of Insurance
333 Guadalupe
Austin, Texas 78701-3938

Mr. Mike Gerik
Chairman
Texas Windstorm Insurance Assoc.
5700 South MoPac Expressway
Building E, Suite 530
Austin, Texas 78749

Mr. John W. Polak
General Manager
TWIA
5700 South MoPac Expressway
Building E, Suite 530
Austin, Texas 78749

Dear Ms Kitzman:

To follow up on our conversations from Thursday morning, March 21, 2013 in Chairman Todd Hunter's office, we believe that the proposed discussion and any action to place TWIA into Receivership is unnecessary and unwarranted. What the Board should do, as has long been advocated by Mike Geeslin, the previous Insurance Commissioner, as well as coastal members of the Board, is assess the insurance companies under the law applicable to insurance policies in effect in September 2008.

In our meeting, as well as reflected in TWIA documents, we were advised that TWIA has spent approximately \$316 million dollars in 2009, 2010, 2011 and 2012 premiums to resolve 2008 Hurricane Ike claims. In addition, TWIA has set aside in reserves an additional \$330+ million from premiums to pay for the currently pending/remaining claims. This brings the total probable payout for Hurricane Ike to \$2.7 billion.

In the September 17, 2008 Board meeting after Hurricane Ike, Jim Oliver, the Executive Director of TWIA, noted that with \$42 Billion in insured exposure in the 6 county Ike impacted area, at a

COMMITTEES

Land & Resource Management
Chairman

Public Education
Member

Ms. Eleanor Kitzman

March 24, 2013

Page 2

10% loss ratio, TWIA's exposure could be 4.0 Billion dollars. Mr. Mr. Oliver requested an assessment of \$830 million to the insurance carriers under the 2008 TWIA statutory funding structure (this statutory structure was changed in 2009 by HB 4009 as discussed below). Mr. Oliver noted that with cash from the Trust Fund and \$1.5 billion in reinsurance this \$830 million assessment would allow TWIA to pay claims up to \$2.5 billion. The four coastal representatives on the Board voted *for* the \$830 million assessment, but the five insurance industry representatives *did not vote for the assessment*. The insurance company representatives would only go as high as a \$430 assessment which brought TWIA to a capacity to pay \$2.1 billion.

Despite promises (discussed below) to make further assessments at later dates, no further assessment has ever been made! Instead, the TWIA Board, even under the oversight by TDI and Commissioner Kitzman, has paid out and reserved \$600+ million in premiums. If the Board would simply follow the law in place for these 2008 policies and assess the insurance companies and move the premium money to the Trust Fund, which currently has \$178 million, TWIA would have over \$775 million, which is hundreds of millions more (50%) than the Trust Fund has ever had!

At the October 8, 2008 Board meeting, it was noted that TWIA expected 90,000 claims and estimated the cost to be \$2.7 billion dollars. (Ironically, we were advised in our meeting on 3/21/13 that this is the total that TWIA has paid and reserved for all Ike claims.) Further, Mr. Oliver noted that another assessment might not be necessary *until the first quarter of 2009*. The Board agreed to wait to discuss another assessment until the December 2008 meeting.

On November 18, 2008 the head actuary for TWIA responded to an inquiry from Rep. Larry Taylor's office that the estimated losses were \$2.1-\$2.5 and noted the \$430 million in assessments and added, "*For example, if the ultimate losses from Hurricane Ike are \$2.5 billion, we will need to assess an additional \$400 million from the last layer of assessments.*"

The next meeting of the TWIA Board was December 9, 2008 at which time Mr. Oliver estimated the losses would be \$2.1-\$2.4 and that another assessment might be necessary the following (2009) summer.

Although there is no talk of an assessment on the companies at the March 9, 2009 meeting, it was noted that, "The two hurricanes (Ike and Dolly) depleted the Catastrophe Reserve Trust Fund.... Unless a change is made in the statute, TWIA will have no funds for hurricane season 2009, *except company assessments*." Likewise, there was no talk of assessments during the June 23, 2009 or December 15, 2009 meetings.

The March 9, 2010 meeting had no discussions of assessments. It was noted that \$1.4 billion had been spent to date and there is a reference in the audit documents that \$2.3 billion is the estimated loss. The June 22, 2010 meeting did not reference any assessments and oddly estimated losses at \$1.9 billion "\$100 million greater than originally anticipated" which is in direct opposition to all of the above including their answers to the audit report in the March 2010 records.

The September 14, 2010 meeting reflects that 92,700 claims had been filed and only 40,000 policyholders in the 6 counties had not had a claim filed. It was noted that \$1.725 billion had been paid out to date and the estimate was at \$2.1 billion for Ike losses. It is also noted that there was a recent settlement of the "slab" cases.

At the December 7, 2010 meeting, it was reported that \$1.82 billion had been paid to date and the incurred losses would probably be \$2.3 billion "up from the original estimate of \$2.1" yet **there was no discussion of assessments.**

On March 21, 2011 Commissioner Mike Geeslin wrote a letter to TWIA, as the result of a legislative inquiry, specifically, "could the Association use current premium income to pay for Hurricane Ike and Dolly losses?" After analyzing the legislation that was passed in 2009 (HB 4409) the Commissioner determined that, without expressly saying it, TWIA should assess the companies. "As the losses from Hurricane Ike and Dolly are obligations and liabilities that existed prior to the effective date of HB 4409, we believe the funding mechanism for such losses is contained in Chapter 2210 before it was amended by HB 4409 (i.e. assessment of the companies) ... **It appears that current premium dollars should not be used to pay claim losses from Hurricane Ike and Dolly.**" Mr. Pollack wrote a memo to the Board raising the issue. No action was taken.

At the June 28, 2011 Board meeting, Mr. Pollack noted that it was unclear if assessments were necessary. In an audit that was presented to the Board, the auditing company noted under the section, "Nature of Business" that, "In the event of a net loss in any policy year prior to January 1, 2009, members participating in that policy year may be assessed for their share of the loss based upon their respective participation percentages." No action was taken.

Before he left office, Commissioner of Insurance, Mike Geeslin, *again* wrote the TWIA Board on August 12, 2011 addressing the assessment issue. He wrote, "Also, of substantial interests are issues related to the resolution of Hurricane Ike losses and funding. **These include, but are not limited to, the potential assessment of member companies for 2008 losses, and accounting for 2009 through 2011 annual premium dollars that have been used to pay Ike claims.** *How these matters are resolved will have an impact on the level of public trust of TWIA...* I believe that at the next Board meeting, the Board should have all available information from counsel and TWIA staff necessary to vote on and resolve these issues." How prophetic Commissioner Geeslin was 18 months ago as we sit here today!

Commissioner Kitzman took over for Commissioner Geeslin between the June and September 2011 Board meetings. At the September 13, 2011 Board meeting, Commissioner Kitzman told the Board that she did not think that an assessment was needed at that time despite the fact that TWIA had paid and reserved over \$200 million out of Post Ike Premiums and that the Board had sufficient revenue (**premiums???**) and reinsurance to pay the remaining Hurricane Ike and Dolly claims and that TDI would continue to monitor the situation. It was then noted that TWIA had paid out over \$2.0 billion and that reinsurance would be exhausted by the end of the year.

Ms. Eleanor Kitzman
March 24, 2013
Page 4

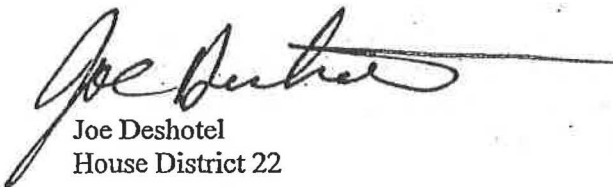
At the December 13, 2011 Board meeting it was noted that the reinsurance had been exhausted and that \$30 million remained uncollectable due to the Lehman Brothers failure. A memo dated December 31, 2011 raised the estimate of Ike losses to \$2.35 Billion along with \$305 million in losses from Hurricane Dolly and noted that during a normal non storm year approximately \$200 million would be put into the Trust fund. However, because of the Robstown storm and increasing reserves for Ike, only \$82 million would be transferred to the Trust Fund. **No discussion of assessments was mentioned.**

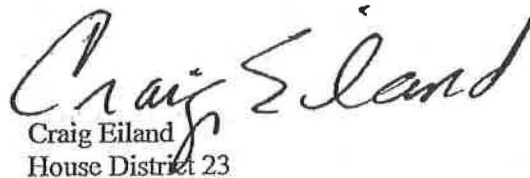
A March 31, 2012 "Management Discussion and Analysis" presented at the May 15, 2012 Board meeting raised the Ike loss claims estimate to \$2.4 Billion. No mention of assessments was presented. Likewise, at the August 12, 2012 Board meeting a lengthy discussion was held with Commissioner Kitzman, about TWIA funding including the \$174 million in the Trust Fund and scenarios that could deplete available funding sources. **Assessments were never mentioned by anyone.** This meeting is in contrast to the meeting just a year earlier where Commissioner said TWIA had sufficient revenue and reinsurance to pay claims.

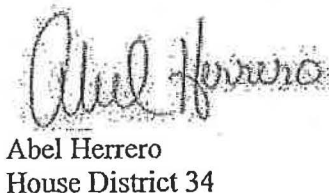
A memorandum from the TWIA executive director John Pollack presented to the Board at the December 2012 meeting raised the Ike loss estimate from \$2.4 billion to \$2.53 billion. **Assessments were not mentioned.**

A review of the available Board meeting minutes reveals that the TWIA Executive Director's initial estimates that additional assessments were necessary were correct and that nobody ever followed up on Commissioner Geeslin's directives. It is not too late for the Board to take action, assess the member companies, put \$600 million in the Trust Fund and shore up TWIA's funding situation which would eliminate the need to even discuss receivership. With \$775 million in the Trust Fund the legislature could build a substantial financial model for the security of the coast and the State of Texas.

Sincerely,


Joe Deshotel
House District 22



Craig Eiland
House District 23


Abel Herrero
House District 34


Todd Hunter
House District 32

Ms. Eleanor Kitzman
March 24, 2013
Page 5


Eddie Lucio, III
House District 38


Allan Ritter
House District 21

Cc: TWIA Board Members
David Durden