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Unethical claims cultures promote outcome oriented expert reports

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Nicole Vinson's post *State Farm Sued for Fraud for Katrina: More Altered Engineering Reports Alleged*, a recent filing by my co-liaison counsel Steve Mostyn, and one by Javier Delgado, prompted me to write about how groups of people with power can dictate an unethical claims culture biased and driven to pre-determined outcomes. I strongly encourage those involved with this area of claims to read each of the linked materials.

I will begin with Steve Mostyn's excellent letter demanding further discovery in Sandy litigation. This is on my mind because unless there is a last minute settlement agreement, this will be a topic at the April 28th hearing in Brooklyn.

I first met Steve Mostyn after Hurricane Ike in 2008. Steve, his lovely wife Amber, and capable partner Rene Sigman, have built a very capable law firm with tremendous success. Steve Mostyn has extraordinary energy and is a star asset to the policyholder's Bar.

He first notes the primary issues involved with the Superstorm Sandy outcome-oriented engineer reports:

- Improper alteration of reports prepared by licensed engineers without the engineers' authority or consent;
- Use of unlicensed engineers to inspect properties for flood damage;
- Use of uncertified engineering companies to perform engineering analyses;
- Improper attempts to obtain ratification from engineers on improperly altered reports; and
- Inadequate investigation by and/or collusion with WYO carriers, adjusting companies, and FEMA regarding these improper engineering practices.

A call to find out what the leadership of FEMA did after learning of complaints is part of his call for discovery:

Plaintiffs request the Court allow Plaintiffs to depose James Sadler regarding his knowledge of the use of these engineering companies, the appeals to FEMA pointing out the problems with these companies' credentials and reports, how he responded to these complaints, and this investigation into the allegations presented to FEMA.

The next truly significant request is to ask about matters from the consulting engineers. I would suggest the reason this request is so significant is because some honest field engineers may indicate whether they were pressured, requested or threatened with termination when ask to alter their first version of an opinion. In the lawsuit filed by the State of Mississippi, that is exactly what allegedly happened to engineers who did not go along with the expected outcome oriented opinion. Mostyn asked:

Plaintiffs request the Court to allow Plaintiffs to send depositions on written questions to all individual engineers who consulted on Hurricane Sandy claims for HiRise Engineering, P.C., U.S. Forensic, LLC, or United Technical Consultants....

And while not inclusive, I applaud the request for the review of Simsol estimating software concerning overhead and profit and sales tax (he should have also included Xactimate and made inquiry for depreciation calculations) and his call for an investigation into institutional practices that allowed these to occur and the frequency they occurred.

The truth is that policyholders have only received a small fraction of the possible Superstorm Sandy evidence regarding outcome-oriented reports and estimates. In Javier Delgado's filing, he lists the numbers of files that internal records show were up for revision with one company at a particular time. ***He also filed one email showing that a marketing person for the engineering company was helping with the revision process.*** This marketing person wrote:

8737 Need this one ASAP- we should just revise the format (I can help) UTC said client will pull this job by next week if they do not have it.

8858 Glenn sent this back for revision- David Shih refuses to revise according to email. Ben said if so, to just send the report as is and note that I spoke with him about it so that Glenn doesn't 'explode'

David Shih is the engineer refusing to change his opinion.

After the issues came about, Sandy Flood settlement discussions started and appeared to be moving. They have now stalled. Reviewing all these emails and all internal memoranda will help provide the picture of what really happened. It is expensive and time consuming, but it is the only way for the truth to come out. Hopefully, the settlements will start anew.

This need for discovery is demonstrated by the 50 page complaint filed by Mississippi against State Farm. It is a must read for those who are interested into how claims cultures of major insurance companies go off track. The detailed allegations against State Farm are summarized within a part of the complaint:

- Falsely instructed its claims adjusters that all major Katrina damage was caused by flooding;
- Commissioned and distributed to its adjusters and third-party engineering firms a fraudulent report stating that Katrina's floodwaters, unlike those of every other hurricane ever observed, preceded Katrina's winds;
- Commissioned and distributed to its adjusters and engineering firms a fraudulent report stating that Katrina produced Category 4 flooding but only Category 1 winds;
- Instructed its adjusters to adjust claims based only on the square footage of its policyholders' homes, rather than performing federally-required "line-by-line" estimates to

- determine the extent to which wind and flood damaged the homes;
- e. Created fake records to give the false impression that it was performing those required "line-by-line" estimates;
 - f. ***Coerced engineering firms retained to assist with State Farm's claims assessments to change reports that identified wind as the primary cause of damage to its policyholders' homes;***
 - g. ***Fired engineering firms and demanded that individual engineers be fired if they found that wind was the primary cause of damage to its policyholders' homes;***
 - h. ***Instructed adjusters and engineering firms to disregard eyewitness accounts of wind damage;***
 - i. Issued blanket denials of claims for wind damage without adjusting those claims to determine whether wind or flood had caused structural damage to its policyholders' homes....

I bolded two allegations because these are two prominent methods used by insurance companies. First, they try to hire only engineering firms that will give reports they expect to be obtained. If a report is not made as ordered, they deselect those firms from further work. Thus, insurance companies hire only have engineers that "have their thinking right." The Mississippi complaint sadly details the terminations of engineers that complained about the ethics of changing reports or working with a client that demanded a certain outcome.

This is a problem in the insurance industry. It is one of ethics and claims leadership not doing enough to put an end to it. I am surprised there is not more discussion of the financial conflict between vendors trying to provide reports which lower claims payments in return for repeat business and the ethical promise to fully and promptly pay the insurance consumer. Yet, with the Congressional investigations about to get underway and more media attention to this plague, somebody will eventually get the message or there will be more of this type of litigation and criminal investigations.

I would suggest everybody in the insurance claims business consider watching this video and following up:

Click here to view the video.

Positive Thought for the Day

"In everything, therefore, treat people the same way you want them to treat you, for this is the Law..."

— *Matthew 7:12*

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