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Contractors Performing Roofing Repairs in Texas: Don't Cross the Line with Property Insurance Carriers

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Texas and other states limit the extent to which a roofing contractor can be involved in the insurance claim process on behalf of a property owner. The Texas Insurance Code restricts the ability of adjusters to act as contractors or contractors to act as adjusters with regard to roof related claims. Texas law states that "A roofing contractor may not act as a public adjuster or advertise to adjust claims for any property for which the contractor is providing or may provide roofing services, regardless of whether the contractor holds a license under this chapter."

The statute further defines public insurance adjuster as someone who "for direct, indirect, or any other compensation: (i) acts on behalf of an insured in negotiating for or effecting the settlement of a claim or claims for loss or damage under any policy of insurance covering real or personal property..." Accordingly, roofing contractors are prohibited from negotiating for or effecting the settlement of a roof related claim on behalf of a property owner.

Certainly it is appropriate and expected for contractors to render opinions on what needs to happen to a structure from a construction standpoint to fix damage. However, that is different than negotiating over whether those physical construction items should or should not be covered under an insured's insurance policy.

For example, it would be acceptable for a contractor to argue that the roof decking needs to be replaced due to water damage resulting from a leaking roof. That is different than arguing with the insurance company that the insurance company should pay for it or advising a property owner over whether to accept an insurance company's offer. If the property owner has not employed a public adjuster, then the property owner should take that message to the insurance company itself and make the decision whether it has satisfied itself as to what the insurance company has agreed to pay.

This issue has recently attracted quite a bit of attention due to a recent Texas Supreme Court case. A November 2018 Law360 article, "[There's a Storm Brewing for Some Texas Contractors](#)" provides insight into a recent Texas Supreme Court ruling that confirmed its decision to "not hear a roofing contractor's challenge to a ruling that certified a class of property owners who claim the company unlawfully acted as an insurance adjuster, leaving intact a decision that could impact all Texas contractors who negotiate insurance claims." As a result, there is a pending class action lawsuit brought against a roofing contractor who is alleged to have agreed to negotiate with their customer's insurance carriers. The case will ultimately hinge on whether the language in the contract



results in a finding that the contractor was adjusting claims on behalf of its customers.

In my experience as a construction lawyer, I have represented roofing contractors who get involved giving their opinions from a constructability standpoint. But I have also seen competitors advertising, and even have seen contracts, where the roofing contractor is proposing to negotiate with the insurance company on the property owner's behalf, something that is clearly prohibited. The underlying message here is that you should always get competent legal advice to advise you as to how you run your business and to review and draft your contracts.