



INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: INDIANA DEPARTMENT OF INSURANCE (IDOI)

TITLE: MINE SUBSIDENCE PROGRAM

CASE ID: 2018-07-0181

DATE: September 3, 2019

The Inspector General's Chief Legal Counsel, Tiffany Mulligan, after an investigation by Special Agent Chuck Coffin, reports as follows:

The Indiana General Assembly charged the Office of Inspector General (OIG) with addressing fraud, waste, abuse and wrongdoing in agencies. Ind. Code §4-2-7-2(b). The OIG investigates criminal activity and ethics violations by state employees. Ind. Code §4-2-7-3(3). The OIG may recommend policies and carry out other activities designed to deter, detect and eradicate fraud, waste, abuse, mismanagement and misconduct in state government. Ind. Code §4-2-7-3(2). The OIG also may advise an agency on implementing policies and procedures to prevent and reduce the risk of wrongful acts within the agency. Ind. Code §4-2-7-3(8).

I. Background

A. Complaint and Overview of Investigation

On July 3, 2018, the OIG received a complaint alleging potential fraud involving the Indiana Mine Subsidence Program (MSP). The complaint alleged that construction companies involved in making repairs to homes due to mine subsidence may have engaged in fraudulent activity. More specifically, the complaint alleged that a specific construction company (the

Company) was helping homeowners submit claims for MSP funds and then convincing the homeowners to sell the homes to the Company for low dollar amounts while the homeowners kept the MSP funds. According to the complaint, the Company would then sell the homes for a higher dollar amount and assist the new homeowners in making claims for similar repairs that the Company should have already made under the previous claim.

Special Agent Coffin investigated the complaint. First, he found that the Indiana Department of Insurance (IDOI), which administers the MSP, hired an independent, third party professional engineering firm (the Firm) in April of 2018 to investigate individual MSP cases and review the validity of the claims and how they were processed. The Firm reviewed the files of nine MSP clients that IDOI had identified as having potential problems. The Firm's investigation found several questionable practices with the overall MSP process. IDOI shared the Firm's findings with the OIG. Special Agent Coffin conducted an expanded investigation of twenty-one IDOI client files, which included the Firm's investigation and report findings.

Special Agent Coffin also learned that IDOI had concerns regarding the MSP. First, IDOI expressed concern that the Mine Subsidence Insurance Fund has seen a significant increase in claims and payouts in recent years.¹ They stated that this resulted in a declining balance of the Fund. Second, IDOI raised concerns about multiple MSP claims occurring on the same property. IDOI found twelve properties for which IDOI paid two claims in the past. According to the Firm, if a home's foundation was adequately repaired, it would be unlikely for there to be additional claims on the same property. Third, IDOI questioned the necessity of certain repairs that had been

¹ IDOI's website lists the number of MSP claims filed, along with the dollar amount of claims on its website at: <https://www.in.gov/idoi/2575.htm>. In FY 2008/2009, IDOI saw eighteen MSP claims with a total amount of \$576,936.21. In FY 2016/2017, IDOI saw thirty-nine MSP claims with a total amount of \$4,522,439.00.

made on certain properties. For example, IDOI found that the Company regularly made the same recommendations on every property regardless of the specifications of the home or the specific damage due to mine subsidence. IDOI asked the OIG to investigate these concerns, and Special Agent Coffin spent over four hundred hours investigating the MSP. IDOI fully cooperated with the investigation.

B. Overview of MSP and MSP Claim Process Prior to 2017

The Indiana General Assembly established the Mine Subsidence Insurance Fund in 1986. The purpose of the Fund is to make insurance available to home and property owners for damage due to mine subsidence in certain Indiana counties.² Mine subsidence is defined as “the collapse of an underground coal mine resulting in damage to a structure.”³ Ind. Code §27-7-9-3. According to IDOI’s website, standard insurance policies do not cover mine subsidence damage due to the nature of the damage. The MSP allows homeowners in counties vulnerable to mine subsidence to purchase mine subsidence insurance in addition to their homeowner policies.

IDOI provided Special Agent Coffin with a basic overview of the MSP claim process prior to 2017. IDOI explained that first the homeowner would notice damage and report it to his or her insurer. Then the insurer would report the damage to IDOI. Once IDOI received the insurer’s report, IDOI would send it to an environmental engineer, with whom IDOI contracts, to assess and monitor the damage. If the environmental engineer determined mine subsidence was the cause of the damage, the environmental engineer would monitor the property until three consecutive

² Indiana Code provides that the Mine Subsidence Insurance Fund will be available in counties identified by the Indiana Department of Natural Resources as being “(1) at least partially within the Illinois Coal Basin; or (2) underlain by coal-bearing rock formations of the Pennsylvanian system.” Ind. Code §27-7-9-6 and 7.

³ Ind. Code §27-7-9-3 further specifies that mine subsidence does not include “loss covered by earthquake, landslide, volcanic eruption, or collapse of storm or sewer drains.”

months with no movement. Then the insurer would solicit a repair quote or quotes from a construction company and recommend payment on a claim. IDOI would pay the claim. Although the homeowner, insurer and IDOI followed this basic process, the process was not very detailed prior to 2017, and it was not consistently applied.

II. Investigation and Findings

A. Criminal and MSP Violations

Special Agent Coffin reviewed twenty-one client files to determine whether the Company or any other party involved in the MSP claims for these files engaged in fraudulent activity. This review found files that appeared to be missing paperwork, such as no invoices or other evidence that repairs on the property were ever made. IDOI stated that they did not always receive proof that repairs on a property were made prior to paying an MSP claim in the past.⁴ This lack of documentation made it difficult to show that the Company or any other party involved in the MSP claim process made representations that repairs had been completed when they had not or made representations that they intended to perform the work when they had no such intent. Furthermore, Special Agent Coffin found no homeowners who stated that the contractor told them repairs had been made when they had not been made.

Special Agent Coffin reviewed the files with two MSP claims occurring on the same property. Again it was difficult to determine whether repairs were made in both claims and if so, whether they were needed in both cases, due to lack of documentation. Furthermore, IDOI did not have policies or procedures that prohibited or flagged a claim when a previous claim had been

⁴ Ind. Code §27-7-9-12 provides that the commissioner of IDOI shall pay an insurer within ninety days of receiving a loss report. It reads that “[t]he commissioner shall require that each loss report include: (1) an itemized statement of the damage, repairs made, and the cost of each repair; and (2) any other documentation the commissioner believes will substantiate the reported loss.”

made on the same property. Special Agent Coffin also looked at the necessity of certain repairs that had been made on certain properties. At the time these repairs were made, IDOI had no standards or guidance governing the types or extent of repairs for which MSP funds could be used. Furthermore, in many, if not most cases, neither IDOI nor the insurer evaluated or approved a plan or design prior to the repairs being made. Without standards or an approval process in place for repairs, IDOI was often unable to determine if a construction company used MSP funds to make unnecessary repairs.

Special Agent Coffin also investigated whether any of the twenty-one files he reviewed involved the sale of real property and whether any of the files contained evidence of a criminal violation involving the Sales Disclosure Form under Ind. Code §6-1.1-5.5-10. This statute provides a criminal penalty for someone who “knowingly and intentionally . . . omits or falsifies any information required to be provided in the sales disclosure form” for the sale of real property⁵. The Sales Disclosure Form is completed by the seller and buyer during the real estate property closing and must be filed with the county assessor and auditor after the closing.

Special Agent Coffin found only three of the twenty-one files involved questionable disclosures under Ind. Code §6-1.1-5.5-10. For the first questionable file, he found that the Sales Disclosure Form contained all of the necessary signatures and the county auditor and assessor stamps. IDOI verified that the original owner of this property filed a MSP claim and received MSP funds from IDOI for extensive foundation work and the placement of push piers. The original

⁵ Ind. Code §6-1.1-5.5-10(a) provides that it is a Level 5 felony for a “(a) A person who knowingly and intentionally: (1) falsifies the value of transferred real property; or (2) omits or falsifies any information required to be provided in the sales disclosure form.” Ind. Code §6-1.1-5.5-10(b) provides that it is a Class A infraction for “(b) A public official who knowingly and intentionally accepts: (1) a sales disclosure document for filing that: . . . (B) omits or falsifies any information required to be provided in the sales disclosure form”

owner sold the property to the Company's owner, and the Company's owner sold the property to a new owner. The Company's owner did not list any foundation problems on the Sales Disclosure Form because the MSP issues had been resolved. The new owner has not filed a MSP claim; therefore, it appears the prior remediation was successful, and no further mine subsidence has occurred.

For the second questionable file, Special Agent Coffin found that the Sales Disclosure Form contained all of the necessary signatures. He found that the Company's owner sold the property to a new owner and verbally disclosed mine subsidence to the new owner prior to the sale. Although the Sales Disclosure Form does not specifically list that mine subsidence might be an issue for the property, the new owner was fully aware of the potential subsidence issue, and as a result of the verbal disclosure, the new owner purchased MSP insurance.

For the third questionable file, Special Agent Coffin found that the Sales Disclosure Form contained all of the necessary Seller and Buyer signatures and the county auditor and assessor stamps. He also found that the Seller reported the mine subsidence on the Seller's Residential Real Estate Sales Disclosure Form prior to the Buyer making an offer to purchase the property.

Special Agent Coffin's investigation and file review found insufficient evidence of violations of the applicable criminal statutes. He also found no evidence of a violation of the Code of Ethics. As a result, the OIG is closing this case for insufficient cause.

B. MSP Policies and Procedures

As noted above, Special Agent Coffin found that prior to 2017, IDOI's policies and procedures for processing MSP claims were limited and not consistently applied. IDOI stated that implementing the MSP has been challenging due to IDOI's limited technical knowledge on mine

subsidence issues. Special Agent Coffin found that IDOI took several proactive steps to address these concerns in 2017 and 2018.

Beginning in the summer of 2017, IDOI began requiring the insurer to obtain two repair quotes instead of just one quote. IDOI now approves one of the two quotes, generally the lower of the two quotes. In the investigation the Firm conducted on the nine MSP clients, the Firm noted that the Company has been the primary provider of quotes in the past. The Firm also stated that it can be difficult for the insurer to find a second repair quote due to the Company's predominance in the region for this type of work. Nonetheless IDOI found that obtaining two quotes for the repair work shed light on what repair work was needed and what the needed repairs should cost.

Beginning in early 2018, IDOI began searching their database with each MSP claim to determine whether someone had previously submitted an MSP claim on the property. IDOI had not consistently taken this step prior to 2018. Under this new step, if IDOI finds a previous claim on the property, they forward any reports of previous claims to the engineering firm who is reviewing the property. This change allows IDOI to consider past claims when evaluating the current claim.

In early 2018, IDOI also issued procedures for processing MSP claims. The procedures outline specific directions for IDOI staff on how they should record the claims, process the engineer's report, receive quotes and pay claims. The procedures also include requirements for the MSP client, insurer and construction company on what must be included in each submission to IDOI.

As of mid-2018, IDOI began requiring verification from the insurer that repairs had been made prior to rendering payment on a claim. Prior to this change, IDOI required no proof that the

repairs were actually made, which resulted in payments made with no documentation that the funds were used to stabilize the home. In addition to requiring proof of payment to the insured with the insurer's request for reimbursement, IDOI now requires the insurer to submit the following documents prior to reimbursing replacement costs: final invoice from the contractor; confirmation by a representative of the insurance company that the repairs have been completed; and copies of receipts for all materials used in repairs. Once IDOI receives the documentation from the insurer, IDOI's Commissioner can approve payment.

After IDOI's initial implementation of the requirement for insurers to provide documentation of repairs made, IDOI learned this requirement is only enforceable for policies paying Replacement Cost Value (RCV). IDOI has yet to receive any RCV reimbursement requests for homes remediated by the Company. Many policies instead cover Actual Cash Value (ACV). ACV is a depreciated amount and does *not* require that repairs be made.

IDOI has noted that it has seen a 25% reduction in MSP claims since it made these changes.⁶ Also, IDOI has approved fewer claims than it has been in the past, and IDOI has paid out the claims more slowly since it has implemented the changes requiring additional documentation. IDOI also stated that it continues to look at additional ways to clarify its policies and ensure the health of the Mine Subsidence Insurance Fund for the future.

The OIG acknowledges that IDOI has taken several proactive steps to improve the administration of the MSP. These efforts should reduce the possibility for waste, fraud and abuse of MSP funds in the future. The OIG recommends that IDOI continue to define their policies and procedures for the MSP going forward and strengthen their efforts to ensure compliance with such

⁶ For the past three years, IDOI received an average of 43 claims per year, but in FY 2019, they only received 32 claims.

policies and procedures. IDOI also should consider promulgating administrative code rules⁷ that further define the procedures and requirements for the MSP, rather than simply relying on internal policies.

Dated: September 3, 2019

APPROVED BY:

Lori Torres

Lori Torres, Inspector General

⁷ IDOI has the authority to promulgate rules for the MSP under Ind. Code §27-7-9-17.