



HURRICANE HARVEY: KEEPING SIGHT OF TEXAS' PROMPT PAYMENT OF CLAIMS ACT

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As the first major hurricane to make US landfall since 2005 and with a ferocity reminiscent of Katrina, Hurricane Harvey has impacted a wide segment of the property, construction, and energy (re)insurance market with risks located in the coastal areas of southeast Texas, Houston and its surrounding counties, and the Gulf Coast. The early projections anticipate US\$40-50 billion in losses, and years of restoration.

As a catastrophe prepared industry, the insurance market will faithfully resolve the vast majority of those claims swiftly and efficiently on behalf of the affected insureds. Clearly the market is already responding, making good faith efforts to reach customers, beginning to assess and address their losses, and readying funds to support the restoration.

CAT and property teams will undoubtedly be responding to substantial and numerous claims within Texas and beyond, which will stretch the service operations of the market to meet the needs of the impacted policyholders. The market should note, the Texas Department of Insurance has already authorized insurers to immediately use nonresident and emergency adjusters to handle claims. TDI Bulletin b-0011-17.

<http://tdi.texas.gov/bulletins/2017/b-0011-17.html>

Any such event is always complex to manage, and the market will face challenges in handling such a significant number and range of claims. As was evident after Ike and Katrina, there will inevitably be communication and service challenges, and policy disputes. Texas has an active insurance dispute trial bar, and recognizes insurer Bad Faith. As such, it is important for the market to keep sight of the critical provisions of the Texas Insurance Code, particularly those which obligate insurers to effectuate prompt, fair, and equitable settlements.

Insurers' duties to policyholders when adjusting claims have been set forth in Chapters 541 and 542 of the Texas Insurance Code. In short, insurers are obligated to attempt to effectuate prompt, fair, and equitable settlements where the insurer's liability has become reasonably clear, and after reasonable investigation, provide the policyholder with a reasonable explanation for an offer of compromise or of why a claim was denied.

Under Chapter 542, known as the "Prompt Payment of Claims Act," insurers have 15 days (and eligible surplus lines insurers have 30 *business* days) after receipt of a notice of claim to:

- Acknowledge receipt of the claim notice.
- Advise that an investigation of the claim is being commenced and actually begin the investigation.
- Ask the insured to provide an insurer with the documents necessary to adjust and evaluate the claim.

After an insurer receives the information it requested, it then has 15 business days on which to make a decision about the claim. If an insurer is unable to complete its evaluation of the claim within that time, the insurer may request up to 45 additional *calendar* days in which to continue its evaluation of the claim, and that request must be made in writing and must provide the insured with the reasons the additional time is necessary. An insured's consent is not required for the extension but the insurer must provide reasonable grounds for the requested further extension. If at the end of the investigation, or expiration of the relevant time, the insurer will pay the claim, it must make the payment within five business days to the insured. If the insurer denies the claim, it must do so in writing setting forth the specific reasons for the denial.

On September 1, 2017, the Insurance Commissioner declared the weather-related event that occurred August 25, 2017 through August 31, 2017, a catastrophe for the purpose of claims processing Extension of Deadlines under Texas Insurance Code §542.059. Therefore, the time periods referenced above in Chapter 542, subchapter B relating to claims processing are extended by an additional 15 days for the effected counties. The Order and a full list of counties can be found here. (<http://tdi.texas.gov/orders/documents/20175209.pdf>)

It is worth noting that HB 1774 went into effect on September 1, 2017, approximately a week after Hurricane Harvey made landfall in Texas. HB 1774, called the "hailstorm bill," applies to all severe nature-related events including hurricanes, floods, tornados, lightning and rainstorm claims. The bill relaxes some of the more severe deadlines and penalties under the Act. For claims filed before, September 1, Chapter 542 penalizes insurers who are found to have violated any of the provisions under the Prompt Pay statute by having to pay the total amount of the claim, plus 18 percent interest a year as damages, although with reasonable attorney's fees. After September 1, the penalty interest for the specified weather related claims still exists, but will be determined by a market-based formula that currently works out to 10%. In addition, the statute mandates that claimants must provide insurers 60 day notice of their intent to file a lawsuit on a claim, and also places limitations on a claimants ability to recover full attorney's fees, which must now be "reasonable and necessary."

As the market addresses the exposures covered by the broad scope of implicated policies, it will need to mindfully adhere, and document that adherence, with the proscribed Texas practices to effectively handle the claims and minimize their extra-contractual risk. The market undoubtedly endeavors to fulfill its promise to policyholders and make them whole for the risks assumed, but in so doing rightly seeks to be certain the ultimate exposure falls within the terms of the policies as issued. Attention to the Texas Prompt Payment of Claims Act from the outset will aid the market in achieving both objectives.

Kennedys CMK is here with straightforward and supportive advice to assist the market with its good faith compliance with all applicable laws and implicated policies. Kennedys CMK has offices in Texas, New York, New Jersey, Illinois, Pennsylvania, and Florida. In addition, Kennedys is available around the globe where our clients' interests or policies may involve exposures arising from Hurricane Harvey.

FURTHER INFORMATION

To find out more about our services and expertise, and key contacts, go to: kennedyslaw.com

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