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TWO STORMS: HURRICANE HARVEY AND HB 1774

by Skyler Stuckey, Gray Reed & McGraw LLP
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Although insurance claims may be the last thing on the minds of many folks in Texas at the moment, HB 1774, which governs “force of nature”¹ related insurance claims, is currently set to go into effect on September 1, 2017. Though the bill is known as the “Hail Bill” and was largely intended to help curb abusive legal practices resulting from hail storms here in Texas, it does potentially have further reaching effects than just hail claims. There has been a significant volume of conflicting media coverage of this bill and what it does and does not do, so you may become confused while trying to sort through the information. Please know, in an ideal world, HB 1774 should not affect how you file a claim and how much your insurer pays you for that claim. In the frustrating case where an insurer denies or improperly pays your claim and you are forced to file suit, however, some changes are coming that you may want to avoid. Hopefully this update will provide clarity regarding the potential impact of HB 1774 on your potential claims, and delineate what kind of claims may be time-sensitive due to its enactment.

HB 1774 - Force of Nature Claims

HB 1774 enacts a new section of the Texas Insurance Code, Section 524A. It will govern claims for damage or loss of real property that results from weather-related events. Most homeowners² and some business owners affected by flooding from Hurricane Harvey *should* have flood insurance through the federal government’s National Flood Insurance Program (“NFIP”), which will be unaffected by HB 1774. Business owners, however, should consult their policies to see if they carry additional commercial coverage that will be impacted by the new law.³

Additionally, HB 1774 carves out claims against the Texas Windstorm Insurance Association, which provides insurance coverage in coastal areas such as those largely affected by Harvey. You will want to check your insurance policies to see if they fall into either of those categories. For those who might have coverage and claims that do not fall into those categories, you should be mindful of the following:

Starting Friday, September 1, 2017, there will be new hurdles to clear if you must bring a lawsuit against an insurance carrier. Further, some of the relief you may be able to recover if an insurer improperly denies or pays a claim will be impacted. Chief among the changes are (1) more detailed and stringent requirements regarding the 61-day pre-suit notice and inspection consent requirements that can result in the abatement of a lawsuit if there is insufficient compliance with either or both; (2) a lower limit on the interest recoverable from a late-paying insurer—from the current statutorily required 18% to approximately 10% based on the formula applicable to these claims; and (3) a new limit on the attorneys’ fees recoverable from an insurer if you are forced to bring suit.

¹HB 1774 defines “force of nature” claims to include claims related to damages caused “wholly or partly, by forces of nature, including an earthquake or earth tremor, wildfire, flood, tornado, lightning, hurricane, hail, wind, a snowstorm, or a rainstorm.”

²If you are a homeowner who was affected by Hurricane Harvey, the Texas Department of Insurance (TDI) has a resource page with [Five Tips about Homeowners Coverage](#).

³Notably, business owners who have NFIP coverage will have policy caps of \$500,000 for both building and contents, and may have additional commercial coverage for flooding which *would* be subject to the new law. See <https://www.fema.gov/media-library/assets/documents/126017> for information from FEMA regarding NFIP business policies.

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While most insurance claims are resolved without resorting to litigation, HB 1774 does change the potential results of any litigation you might be forced to bring in the circumstances described. Thus, in order to ensure you are able to take advantage of the current, more claim-friendly law:

For New Insurance Claims Related to Current Damages or Loss:

1) Because HB 1774's change in penalty levels is based on "claims" and not "actions", it is best to file a written notice of claim prior to September 1, 2017, if you have experienced damage that might fall under the "force of nature" classification. This will be certain to maximize potential recovery and avoid more cumbersome notice requirements.

For Insurance Claims Related to Prior "Force of Nature" Losses:

2) If you have a pre-existing dispute with an insurance carrier over a "force of nature"-based claim that has already ripened under currently existing law for denied, delayed, or insufficient payment but would fall under the new law, file suit by August 31, 2017, to be sure to avoid additional notice requirements and potential limitations on attorneys' fees.

Final Thoughts

Notably, the timing of the new law's scheduled enactment during the aftermath of Hurricane Harvey has folks in Austin doing their best to figure out how it might affect claims that are accruing day-to-day, with some legislators calling for a delay in enactment or special dispensation to adjust for the current situation. We can only guess what the outcome of these discussions may be, and, as with any new law, there will be uncertainty in its application until the courts begin to deal with it. So, the best course of action is to be proactive in protecting your interests and potential recovery.

On a more personal level, many members of the Gray Reed family live and work in Houston and the surrounding area. Hurricane Harvey has touched many of our lives, and we are very much aware that legal matters are not the most important matters you are dealing with during this difficult time. If you have been affected by Harvey, we hope this alert will at least take one concern off your mind.

As a final note, this alert comes from attorneys who are seeking to help you manage risk and avoid problems. We would be remiss to not point out that the greatest risk right now has very little to do with insurance claims. Your personal safety is, of course, paramount and HB 1774 really only changes specific parts of a legal process that you, hopefully, will not have to deal with. Its enactment does not, in any way, justify putting yourself in danger over the filing of an insurance claim. Please stay safe out there as, once again, Texans pull together to show our character. Our thoughts and prayers go out to those who have been affected by the recent events on the coast, and the Gray Reed family wishes your family the best as we all move forward.

ABOUT THE AUTHOR



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Skyler's practice covers on a wide range of matters including commercial litigation, complex multi-state litigation, class actions, e-commerce development and technology, internet and media issues, and appellate matters. Throughout his career, he has worked with business entities ranging from Fortune 500 companies to start-ups, closely-held companies and individuals, cities and municipalities, and banks handling matters involving commercial and business disputes; contract and partnership suits; insurance-related matters; ERISA; bad faith claims; patent and trade dress matters; and appellate matters. Skyler received his undergraduate degree in theatre from Pepperdine University and his J.D. from Texas Tech University Law School where he won a national moot court championship in entertainment law, which was argued in front of the Ninth Circuit. (sstuckey@grayreed.com)

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