

MARKETS

New Texas Law Presents Another Burden for Harvey Victims

Among the changes are a sharp reduction in compensation for plaintiffs' lawyers in some cases



Homes submerged near the Addicks Reservoir as floodwaters from Tropical Storm Harvey rose Tuesday in Houston. PHOTO: DAVID J. PHILLIP/ASSOCIATED PRESS

By Leslie Scism

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Many Texas homeowners and businesses with property damaged by Harvey are under the gun to file insurance claims before a new law favorable to private-sector insurers kicks in Friday.

The new Texas insurance law includes changes that affect what happens to a claim that ends up being litigated in court. Among the changes are a sharp reduction in compensation for plaintiffs' lawyers in cases where their clients are awarded significantly less than initially sought.

Plaintiffs' lawyers and other critics of the law are concerned it will hurt policyholders' ability to find lawyers to sue insurers if they are unsatisfied with the outcome of their claim. Backers of the law say it is aimed at weeding out trumped-up claims, after years of allegedly spurious lawsuits claiming hailstorm damage brought by plaintiffs' lawyers against home insurers.

For Texans, the law complicates the claim-filing process under ordinary homeowners' and business policies. As a result, some consumer advocates are encouraging policyholders to file claims before Friday to avoid coming under the law.

The new law is one of numerous issues surfacing in Texas as damage costs grow and gaps in coverage become evident while locals look for rebuilding options.

"History shows that insurers are too attractive to ignore when large amounts of money" are at stake for rebuilding, said Randy Maniloff, an insurance-industry defense lawyer with White and Williams LLP who specializes in coverage disputes.

Just as with Hurricane Katrina, one of the biggest gaps emerging in Texas is that only a fraction of homeowners in and around Houston have policies from the government's National Flood Insurance Program, according to federal data. Standard homeowners' policies exclude flood damage.

In one example, only about 249,000 National Flood Insurance policies were owned by Harris County property owners and small businesses as of June 30, government data show. There are about 1.7 million households in the county, which includes Houston, according to other data. (Some Texans obtain flood coverage from such insurers as Chubb Ltd. and American International Group Inc. for protection of expensive homes and some other property, and many carriers sell flood insurance to businesses.)

The federal flood-insurance program was created in the 1960s because private insurers were unwilling to risk catastrophic losses.

Because so many in the Houston area don't have government flood insurance, lawyers are expected to target property-casualty insurers—and their record \$709 billion surplus—to get money into the hands of their clients, legal and insurance experts said.

Much of the litigation is expected to involve lawyers trying to pierce the exclusion for flood coverage in standard homeowners' policies.

After Katrina in 2005, insurers lost one key battle early over the effort by claimants to expand payouts in instances where there was both wind and flooding damage, Mr. Maniloff said. The early loss in the Katrina case affected subsequent claims. Insurers won reversals on appeal, he said, but by then they had paid out policy proceeds and couldn't go back and collect any money.

"The flood exclusion [in homeowners' policies] is strong," the industry lawyer said. "But there is just going to be too much at stake for people not to take a run at it....The language of homeowners' policies is going to get more twisted than Cirque du Soleil performers in an effort to find coverage."

Meanwhile, Texans are likely to have another issue with the law going into effect Friday. Some businesses are angry that the provisions apply to commercial insurance, not just the hailstorm claims on homeowner policies that helped inspire the new law.

“If you want to restrict hail claims, you should write it to restrict hail claims,” said Bob Ryan, deputy general counsel of Stallion Oilfield Services in Houston.

James Cooper of Reed Smith LLP, an outside lawyer for Stallion, said his objections include the law’s reducing a longstanding penalty aimed at deterring bad behavior by carriers. Under that change, Texas courts will levy as little as 10% interest on insurers for wrongly delayed payments, down from 18%.

Mr. Cooper called that “a dramatic reduction.”

The law’s defenders say it won’t affect the claims process for the vast majority of people. The litigated claims it addresses are “the exception, not the rule,” said Lucy Nashed, spokeswoman for Texans for Lawsuit Reform, a nonprofit group.

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