

Texas Snowstorm Cold Reminder Of Property Insurance Woes

By **Shawn Rice**

Law360 (February 11, 2022, 3:51 PM EST) -- The winter storm that hit Texas last week — though less severe than last year's devastating Winter Storm Uri — will add weather-related claims in a growing dispute in the Lone Star State as policyholder attorneys blame insurers for aggressive claims handling and attorneys for carriers say the fault lies with gross estimations.

Policyholder attorneys braced for new claims as Texas saw winter freezing for a second year in a row, just as they are still dealing with ones from the 2021 winter storm that caused extensive losses because of a power outage. Claims extended from homeowners to electrical companies and natural gas entities.

Insurance companies are more determined in the claims process, according to attorneys for policyholders, with questions raised on the number of occurrences from that 2021 storm. Insurers ask if there are three deductibles in some cases, according to Vincent Morgan of Bracewell LLP, who represents policyholders.

Morgan, whose clients include electrical companies and natural gas entities, said carriers are asking for "impossible levels of proof" in their questions. This line of frustrating questions forces policyholders to look for something that they will otherwise not be able to find to prove their claim, according to him.

"If that's your position, fine, they built courthouses for a reason," Morgan said.

Gross Estimates

Litigation was expected after an event like Winter Storm Uri over coverage like business income losses caused by the power outage, attorneys for insurance carriers said, as well as predictable disputes over damage and costs to repair after water pipe bursts much like those observed after hurricanes.

Coverage for damage caused by freezing pipes wasn't a high priority for most Texans prior to last year's winter storm, but Valerie Henderson of Baker Donelson Bearman Caldwell & Berkowitz PC said it is certainly on top of most of their minds now with more questions being asked at policy renewal.

But attorneys for insurers see two concerning trends coming out of all catastrophe claims, and not just with winter freeze claims: the gross exaggeration of water mitigation and reconstruction estimates by contractors and the increased involvement of "first notice of loss" lawyers in weather-related claims.

Steven Badger of Zelle LLP said this new model is meant to submit the highest imaginable estimate and

then negotiate downward. This trend hurts building owners with delays to rebuilding and repairing damaged property as insurers handle these claims with gross inflations, he said.

"It's the 'win the storm' model," said Badger, who represents insurance carriers. "Our experience is that there is a huge problem right now with public adjusters and contractors writing grossly inflated estimates far, far in excess of what it would really cost to repair the damage."

Power Outage Litigation

Texas Gov. Greg Abbott said at a Feb. 4 press conference that the power grid was running better and more reliably to this year's winter weather conditions. At the time, 20,000 Texans were without power caused by high winds, ice on power lines, and downed trees and branches, according to his office.

This year's losses won't be known for quite some time, said Ben Gonzalez, media relations for the Texas Department of Insurance, as they are still compiling data from insurers on the February 2021 event.

Insurance carriers reported more than half a million claims by mostly homeowners, 42,000 commercial claims and more than 19,000 auto claims, according to the Texas insurance department, with insurers expected to pay more than \$10 billion in insured losses related to the February 2021 ice storm in the state.

Last year compared differently, as at least 57 people died as a result of power outages and extreme cold, according to a Texas state suit filed by more than 100 insurers, and 4.5 million Texas homes dealt with lost power, with water damage caused by pipes that would burst from the freezing temperatures.

Those insurance carriers blamed Electric Reliability Council of Texas and dozens of power-generating companies in January suit for losses to policyholders during Winter Storm Uri, alleging the energy providers didn't properly winterize their facilities to ensure demands were met to heat homes.

ERCOT was also sued by one of its insurers in a Texas federal suit, where the insurer looks to avoid coverage for the state's primary grid operator for Winter Storm Uri litigation. The suits against ERCOT don't allege damages caused by an accident, according to the insurer, but that the event was expected.

Although not necessarily a concern, the litigation coming out of last year's winter storm "has presented some novel issues under Texas law" that will certainly continue to apply to subsequent storms such as the most recent freeze in the state, said Henderson, who represents insurance carriers.

Learned Exposure And Coverage Risks

Winter Storm Uri and last week's winter storm in Texas served as opportunities for homeowners and businesses to visit the policies that they bought and learn what their policies say is covered.

Homeowners learned what coverage they had when there is a burst pipe or power outage for a couple of days, said Micah Skidmore of Haynes and Boone LLP, who represents policyholders, as lack of utilities is usually a sublimit in policies. "Carriers did learn that it does snow in Texas and it can be costly," he said.

On the corporate side, more policyholders became aware of their exposure and coverage risks. Litigation over the electrical grid's failure involves claims of misrepresentation, not just negligence, and

that concerns Tamara Bruno of Pillsbury Winthrop Shaw Pittman LLP, who represents policyholders.

"Rather than making things more transparent. It could drive grid issues into a black box," she said. "You can have ERCOT being concerned about making statements brought back to them."

Contingent business interruption coverage is entering the minds of more companies as it comes into play when a third party takes a hit. But policyholder attorneys say it isn't always clear what the qualifications are for this coverage as the provisions are sometimes not written to fit a company's operations.

Bruno saw last year's storm raise issues for contingent business interruption insurance given the more interconnected businesses are and the longer supply chain. When the interruption hits a vendor further back in the supply chain, an insured entity might not be able to trigger this coverage, she said.

If insurers aren't prepared for a third-party vendor's shutdown, that raises issues that can be used inappropriately by the insurer to deny coverage, according to policyholder attorneys, such as questions on whether the relationship between the insured entity and the vendor falls into an exclusion in the policy.

Hardened Market

The winter storms served as bitter reminders for policyholders to be aware of their coverages — especially around water damage and deductibles. Severe winter weather risks remain unusual for Texas, but insurers eye the possibility of expanded risks with hurricanes, hailstorms, tornadoes and flooding.

The property insurance market has been hard for quite some time, argue policyholder attorneys, with lowered limits and sublimits and higher premiums and deductibles for Texas policyholders.

Morgan of Bracewell heard from a broker that one of their clients was told to expect an increase of 10% to the premium despite not having filed claims. The policyholder without submitted losses wants justification for the increased premium when the insurer said that increase was considered "less" by them.

The trend is that underwriting property coverage has become challenging in Texas, Skidmore added.

"We've been in a hard market for a long time, and it isn't getting softer. They've been dealing with rising premiums for years. When you get claims, people readjust expectations on what to pay for claims," he said. "That's how the industry deals with it by adjusting the rates for this kind of coverage and terms."

The Insurance Council of Texas disagrees with the severity of the property casualty and insurance market in the state, saying problems aren't worse than those across the country with record events and increasing repair costs. Last year, the insurance industry responded well to the winter storm, the trade group said.

Over 90% of the more than 500,000 claims — with \$10 billion in losses — have been closed or paid, said Richard Johnson, ICT's director of communications and public affairs, acknowledging companies have dealt with shortages of construction materials and contractors during this pandemic.

"We all learned that winter storm risks and losses are exacerbated if we don't have the infrastructure to

maintain power during prolonged periods of freezing temperatures," Johnson said.

--Additional reporting by Shane Dilworth and Michelle Casady. Editing by Amy Rowe.

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