

No. 2017- 5261

Official Order

of the

Texas Commissioner of Insurance

Date: OCT 24 2017

**Extension of Certain TWIA Claim-Handling Deadlines
for Hurricane Harvey Claims**

The commissioner of insurance considers a September 28, 2017, request from the Texas Windstorm Insurance Association (TWIA) to extend a claim-handling deadline for certain commercial claims arising from Hurricane Harvey. The request is granted with modifications.

FINDINGS OF FACT

1. Hurricane Harvey was a weather-related event that occurred August 25, 2017, through August 31, 2017.
2. On September 7, 2017, TWIA asked for a 60-day extension of the 60-day period to issue decisions for all commercial claims arising from Hurricane Harvey.
3. On September 21, 2017, TDI adopted 28 Texas Administrative Code § 5.4203 as an emergency rule defining good cause and setting requirements for extension requests under Insurance Code § 2210.573(b) and (d).
4. On September 28, 2017, TWIA submitted a more limited request, asking the commissioner for an additional 60 days from the date a claim is filed to accept or deny Hurricane Harvey claims for:
 - a. condominium losses with at least \$100,000 in expected losses or claimed amounts, and
 - b. commercial non-condominium losses on policies with
 - (1) five or more structures, and
 - (2) combined item limits of liability of at least \$100,000.

5. As of September 28, 2017, the two categories encompass 422 claims. TWIA anticipates the total claims in these two categories will not be more than 700.
6. For claims in which TWIA requests additional information from the claimant, TWIA did not ask for additional time to accept or deny a claim after receiving the information.
7. TWIA believes that the following demonstrate good cause for the commissioner to extend the deadline:
 - a. *Area*: the size of the area affected by Hurricane Harvey, which includes over 2,000 commercial claims spread over 12 counties;
 - b. *Flooding*: delayed access to insured property due to severe flooding in Galveston, Harris, Chambers, Jefferson, and Brazoria counties;
 - c. *Expert shortage*: Hurricane Harvey demand surge, coupled with an industry-wide shortage, for expert commercial adjusters and engineers qualified to inspect complex commercial claims;
 - d. *Complex claims*: longer time needed to adjust a claim for damage to multiple buildings and numerous large and complex structural items covered on a single policy;
 - e. *Condominium documents*: additional time required to obtain and review condominium association legal documents to determine which structures or parts of structures are covered by the policy; and
 - f. *Condominium access*: limited, delayed, or denied access to condominium units.
8. Hurricane Harvey is the largest storm to make landfall in Texas since 2008.
9. As of October 19, 2017, TWIA had received 70,379 claims, which include 2,517 commercial property claims, for losses caused by Hurricane Harvey.
10. The shortage of experts qualified to inspect complex commercial claims, the size of the affected area, the number of policies with complex commercial claims, and delayed access due to flooding are beyond TWIA's control.
11. The Insurance Code and TWIA's policy already give TWIA a remedy if a claimant does not provide necessary condominium legal documents when the claim is filed. In that case, TWIA can request the information under Insurance Code § 2210.573(b) and the policy.¹ TWIA then has up to 60 days after it receives the requested information to accept or deny the claim.
12. There is no evidence of a shortage of individuals qualified to review condominium association legal documents.

¹ TWIA Commercial Policy, Condition 4.b.(1), Our Duties After Loss (Edition date 08/2016).

13. TWIA's commercial policy conditions require policyholders to provide access to the damaged property as often as TWIA reasonably requires.²
14. Granting TWIA's specific request for condominium claims with at least \$100,000 in expected losses or claimed amounts would result in some commercial claims involving residential units being subject to longer claim-handling timelines than similar commercial claims, such as those for office buildings and hotels.

LEGAL AUTHORITY

1. *Claim Decision:* Insurance Code § 2210.573(d) provides that TWIA must accept or deny a claim by the later of 60 days after it receives
 - a. notice of the claim, or
 - b. additional information it has requested from the claimant.
2. *Extensions:* Under Insurance Code § 2210.581, the commissioner may extend any deadline established under Subchapter L-1. Extensions may not exceed an aggregate of 120 days for claims filed during a particular catastrophe year. Commissioner's Order No. 2017-5226 extended by 60 days the deadline for a claimant to demand appraisal on Hurricane Harvey claims.
3. *Good Cause:* 28 Texas Administrative Code § 5.4203 allows the commissioner to extend claim-handling deadlines if TWIA shows good cause. Section 5.4203 defines good cause as "objective facts beyond the association's control that reasonably caused or may cause the association to fail to meet a deadline in Insurance Code § 2210.573(b) or (d)."

CONCLUSIONS OF LAW

1. The commissioner has authority and jurisdiction over this matter under Insurance Code § 2210.581 and 28 Texas Administrative Code § 5.4203.
2. Under 28 Texas Administrative Code § 5.4203, good cause exists to extend TWIA's deadline to accept or deny claims that:
 - a. were received on or before the date of this order;
 - b. arise from Hurricane Harvey; and

² TWIA Commercial Policy, Condition 4.a.(6), Your Duties After Loss (Edition date 08/2016).

- c. are on commercial policies covering five or more structures with combined item limits of liability of at least \$100,000.

I am extending the deadline for TWIA to accept or deny Hurricane Harvey claims on commercial policies with five or more structures and combined item limits of liability of at least \$100,000. To accept or deny claims, TWIA will now have the later of:

1. 90 days after it receives these claims (a 30-day extension), or
2. 60 days after it receives additional information requested under Insurance Code § 2210.573(b).

This extension applies to claims received on or before the date of this order.



Kent C. Sullivan
Commissioner of Insurance