



[Hurricane Harvey's Impact on Insurance Claims - Episode #140](#)

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Hosted by: John Czuba, Managing Editor

Guest Attorney: Laura Grabouski of Tully Rinckey PLLC

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John Czuba: Welcome to *the Insurance Law Podcast*, the broadcast about timely and important legal issues affecting the insurance industry. I'm John Czuba, managing editor of *Best's Recommended Insurance Attorneys*.

We're pleased to have with us today attorney Laura Grabouski from the law firm Tully Rinckey PLLC. The firm provides national services with offices located throughout Texas, New York, California, and Washington, DC.

Laura is a partner with the firm's Austin, Texas office. She focuses her practice on insurance coverage and bad faith litigation. Laura handles first and third party coverage disputes involving CGL, business auto, commercial and residential property, and ERISA policies.

She advises clients on significant decisions by the Texas Supreme Court and the US Court of Appeals for the Fifth Circuit and new legislation affecting the insurance industry. She also counsels clients on risk avoidance strategies and best practices.

Laura, we're very pleased to have you with us today.

Laura Grabouski: Thank you, John.

John: Today's discussion is on the impact of post Hurricane Harvey on the state of Texas and the claims industry. Hurricane Harvey struck the Texas region in late August of 2017.

Laura, for our first question today, who are the major stakeholders in the post Harvey claims process?

Laura: You have, of course, all of the residents that were affected. Those are pretty concentrated in the greater Houston area, as well as the Coastal Bend region, which is going to be the southeastern part of the state. Those are the claimants or the residents who were affected.

You also have FEMA, who has a dual role in terms of FEMA assistance for those who were in the emergency area and who may not have insurance or it may not cover everything.

FEMA also administers the National Flood Insurance Program, which can include...that's going to be your flood policies and can include those that are written directly by FEMA, and also what's called a "write your own," which is private carriers who are writing the policies.

You have TWIA, which is the acronym for the Texas Windstorm Insurance Association, who provides wind insurance for certain designated counties along the Texas coast.

Then you've got, of course, your private insurers who are the insurance companies for certain of the residents under homeowner's policies, as well as some business policies and auto.

John: Laura, what data has been compiled to date concerning Hurricane Harvey claims?

Laura: The Texas Department of Insurance, also known as TDI, has done a couple of reports and presentations to the Texas legislature. The data that's compiled in that report is made up of what they call a data call that was made to private insurers.

And so, this is not going to include FEMA or the National Flood Insurance Program numbers. Those include the claims data for claims currently being processed and some that are already closed that arose after Hurricane Harvey.

They've looked at lots of different data, including amount paid, the number of claims, where those are regionally, and what the kind of damage is. It gives us an idea of the damage, of the economic impact, and looking forward to litigation.

John: What categories of insurance does the TDI include typically?

Laura: They look at property policies issued to homeowners, as well as those issued to businesses. They studied auto policies for people whose vehicles may have been damaged. They looked at policies issued by the Texas Windstorm Insurance Association, or TWIA. They also looked at flood policies. Again, only those written by private insurers.

John: You mentioned what's been paid out before. How much has been paid out and how much is estimated?

Laura: It's interesting, just within the past few weeks or couple of months, rather, TDI has updated their report. They now say that, and this is data that was current as of the end of October of 2017. At that point, there had been 717,000 claims made. Insurers had, at that point, paid out approximately \$7.7 billion.

John: How about by each claim?

Laura: Sure. It would be about 46 percent or \$7.2 billion estimated to be paid out in flood insurance. About 19 percent or \$2.9 billion is in commercial property insurance. 17 percent or \$2.7 billion in auto claims and 16 percent or \$2.5 billion is in residential property payments.

John: Laura, in general, do property policies cover flood?

Laura: They generally do not. To have flood coverage, you would need a separate flood policy.

John: How about wind?

Laura: Wind is going to generally going to be covered, again, under a typical or standard homeowner's policy or a commercial property. There will be some coverage for wind, although the flooding is typically excluded.

John: With regard to the National Flood Insurance Program, how many claims have been paid by the NFIP? What are the payments to date?

Laura: NFIP reported that 91,000 flood insurance claims were filed as a result of Hurricane Harvey and \$8.3 billion had been paid out on those claims so far.

John: Regarding specific litigation, in first party coverage disputes what are some likely coverage disputes?

Laura: The litigation that ensued after Hurricane Ike, which was the last major hurricane to affect Texas and the costliest before Hurricane Harvey. That litigation gives us a bit of a preview. It involves disputes over causation, over extent of damage, which we would expect to see in litigation post Hurricane Harvey.

There was also litigation over what's called an anti-concurrent cause exclusion. That's where, in that particular case, you'd have a policy that excluded flood but provided wind coverage. You got into issues of if it was caused by both wind and flooding. The Texas Supreme Court addressed that and held that that would be excluded under that policy language.

We expect to see some anti-concurrent cause disputes and then disputes over wind versus flooding, things of that nature.

John: Laura, in coverage disputes where will suits be brought, when, and do insurers have a bad faith cause of action here?

Laura: If it's a flood claim, that is going to be brought in federal district court or it would be removable there. That is going to be governed exclusively by federal law. Texas courts have held that insureds do not have causes of action that may generally be available, such as bad faith or some of the statutory claims handling violations that may be brought in other types of claims.

Those policies are governed by a one year from the denial is typically when you would need to file your lawsuit.

In contrast, if there's going to be a suit under a property policy, homeowner's or commercial, those could be brought in state or federal court. You have varying statutes of limitations but it's pretty typical to see a two year limitations period in most policies in a lot of the statutory claims. Bad faith claims have a two year statute of limitations.

John: Laura, does the so called hail bill apply here?

Laura: The hail bill was passed in 2017 by the Texas legislature. It's now been codified and has become Chapter 542(a) of the Texas Insurance Code. It is applicable to first party property claims. It will not apply, again, to the National Flood Insurance Program policies. Again, that's an issue of federal law. It also doesn't apply to TWIA.

For other types of first party property claims, Chapter 542(a) is going to apply to suits that are brought after the effective date, which was September 1 of 2017.



And so, yes, arguably, potentially it may apply to some of these lawsuits.

John: For our final question, Laura, there is a recent Texas Supreme Court decision involving USAA Texas Lloyd's Company. Can you tell us a bit about that? Does it apply here, as well?

Laura: Yes, that is the *USAA Texas Lloyd's Company versus Menchaca*. The original decision by the Texas Supreme Court was issued approximately a year ago. This past Friday, they largely affirmed their original holding on rehearing. They did offer more clarification.

Menchaca is a wide summary of Texas insurance coverage litigation disputes. The court painstakingly developed some rules that can be gleaned from a lot of its prior case law.

Yes, *Menchaca* is expected to figure in Hurricane Harvey litigation, as well as other insurance coverage disputes that are litigated in the state.

John: Laura, thank you so much for joining us today.

Laura: Thank you, John.

John: That was Laura Grabouski, partner with the Tully Rinckey PLLC law firm with national coverage with offices in Texas, New York, California, and Washington, DC.

Special thanks to today's producer, John Weber.

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I'm John Czuba, and now this message.

Transcription by CastingWords

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