Texas Can’t Wait for Windstorm Insurance Reform

By Seth J. Chandler

This hurricane season is looking very bad for property owners on the Texas Gulf Coast. That’s not just because climate experts are predicting more storms than average but also because the coast’s largest windstorm property insurer, the state-sponsored Texas Windstorm Insurance Association (TWIA), is on the edge of insolvency. Unfortunately, Texas Gov. Rick Perry declined last week to add windstorm insurance reform to the agenda for the ongoing special session of the Texas Legislature. Texas cannot wait until 2015. The governor needs to show leadership and force legislators to try to avoid a calamity even if a positive outcome and a grand fix is not a sure bet.

The problem with waiting is that TWIA is broke and its funding model is broken. As acknowledged by the chair of the House Insurance Committee in a warning letter to the governor, there is at least a $1 billion gap in TWIA finances. The problem was revealed more fully at a special hearing Monday of the House Insurance Committee. TWIA is unlikely to be able to pay claims promptly following even a low severity storm. In fact, TWIA may well never be able to pay fully on claims that might be sustained when an insurer with $80 billion in potential exposure and less than $400 million in actual cash collides with a Category 2 or worse storm.

And every day that goes by without a bill passing both Houses, is another day deeper into this hurricane season in which the Texas coast is at risk. Indeed, given the interdependencies in the Texas economy, an inability of TWIA to pay claims would place the entire state economy in jeopardy.

Why such little cash? As a result of dubious management, underfunding before Hurricane Ike, and 2009 legislation that cut off TWIA’s former ability to soak Texas insurers and inland policyholders for large losses, TWIA just didn’t have what it took to shrug off Hurricane Ike claims. And, given the way it currently spends money and the modern risk of hurricanes to an ever developing Texas coast, TWIA’s premiums just aren’t enough to let it escape a cycle of perpetual underfunding. The situation is so bad that the Texas Insurance Commissioner wouldn’t even let TWIA prop itself up by borrowing $500 million now, ahead of a storm.
Borrowing after a storm -- the current plan -- is likewise in doubt. Soundings of the market suggest little appetite to lend TWIA money based on shaky sources of repayment such as massive surcharges on TWIA policyholders. And a bug inserted into the law in the 2011 session makes things worse. The inability of TWIA to market bonds at one level is likely to prevent it from marketing bonds -- even ones that might otherwise be salable -- at other levels.

Texas legislators wrestled this session with numerous fixes but the result was impasse. Disagreements about how much of a subsidy inland Texans should provide TWIA insureds, coupled with the time-tested Texas tangle about damages in lawsuits against insurers, meant that few bills could escape committee and no bill actually made it to a vote.

What could break the impasse? Coastal legislators must recognize that it is simply not sustainable to keep the market out forever and ask inland insureds, who have problems of their own, to pay heavily and in perpetuity for the special risks found on the Texas coast. It doesn’t matter whether that is done directly with surcharges or indirectly through assessments or forcing insurers to sell policies at a major loss along the coast. The alternative of providing coastal insureds with lower-priced insurance that does not pay when the time comes does their coastal constituents no favors. Inland legislators must recognize that it will take some time to wean the coast off the existing system. And everyone should realize that the law about how much “extracontractual damages” victims of insurer misconduct should receive does not matter all that much when the insurer cannot pay even its contractual obligations. If a long term solution cannot be reached, the legislature could at least clean out bugs in the statute that could reduce the odds of an insurance disaster for a few years.

Pity the governor and Texas legislators who, after a storm leaves blue tarps on unpaid policyholders’ roofs and forces inland Texans to pick up the pieces, explain that they were awaiting the perfect time for legislative action or holding out for something a little better.

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