

By: Kolkhorst

S.C.R. No. 44

SENATE CONCURRENT RESOLUTION

WHEREAS, Aransas County alleges that:

(1) Regional Pool Alliance is a distinct governmental unit organized under the Interlocal Cooperation Act (Chapter 791, Government Code), is engaged in the business of insurance by providing risk pool insurance coverage to governmental entities, and offered that coverage to Aransas County;

(2) Regional Pool Alliance promised its members complete disaster recovery services, which included:

(A) filing insurance claims on behalf of its members after a disaster;

(B) pursuing full payment of those claims;

(C) contracting directly with construction contractors for the remediation, repair, and, if necessary, reconstruction of damaged facilities; and

(D) ensuring satisfactory completion of construction projects;

(3) Aransas County paid annual premiums, assessments, fees, and surcharges to Regional Pool Alliance from 2012 through 2022 in exchange for comprehensive insurance coverage for its property and, through Regional Pool Alliance, was named as an insured in various contracts with insurers or insurance carriers for property and casualty insurance to cover losses, including losses due to storm damage caused by natural disasters, such as

hurricanes;

(4) after Regional Pool Alliance collected premiums from Aransas County, it issued an insurance contract that contained coverages, property values, and terms of insurance;

(5) in 2017, Aransas County owned property consisting of approximately 43 buildings, mobile equipment, and other personal property located in Aransas County, Texas;

(6) the insured actual value of Aransas County's buildings and contents was \$37,742,009.00 in the policy that covered losses beyond actual value to the cost of replacement;

(7) at 10:00 p.m. on August 25, 2017, Hurricane Harvey made landfall as a Category 4 hurricane about five miles east of the city of Rockport in Aransas County with wind gusts measured at 152 miles per hour and made a second landfall in Aransas County three hours later near the Copano Bay community of Holiday Beach;

(8) Aransas County experienced the highest storm surge from Hurricane Harvey at 12.5 feet, and more than 15 inches of rain fell in Aransas County in a single day;

(9) Hurricane Harvey is estimated to have caused \$125 billion in damage to the Texas coast as one of the costliest tropical cyclones in United States history with extreme wind damage in Aransas County, Nueces County, Refugio County, and the eastern part of San Patricio County, as it destroyed approximately 15,000 homes and damaged another 25,000 homes, with the most severe damage in Aransas County;

(10) properties owned by Aransas County experienced significant damage including:

1 (A) the complete destruction of the Aransas  
2 County Courthouse and Aransas County Aquarium;

3 (B) devastating damage to Aransas County's  
4 airport, which suffered the loss of almost all of its hangars; and

5 (C) severe damage to many other county buildings  
6 and facilities;

7 (11) after Hurricane Harvey, Aransas County promptly  
8 submitted its claim for damaged property to the insurers through  
9 Regional Pool Alliance, which also submitted claims on behalf of  
10 other entities that suffered damage and losses due to Hurricane  
11 Harvey;

12 (12) Aransas County officials received information  
13 from Regional Pool Alliance periodically, which led the officials  
14 to believe Regional Pool Alliance was receiving the county's  
15 proceeds from the insurance carriers and using the proceeds to  
16 contract with construction contractors to rebuild Aransas County's  
17 facilities damaged by Hurricane Harvey;

18 (13) in late 2021, contractors began complaining to  
19 Aransas County that Regional Pool Alliance was not responsive and  
20 was not paying bills for work performed on Aransas County's  
21 property;

22 (14) Aransas County immediately reached out to  
23 Regional Pool Alliance regarding these complaints, but Aransas  
24 County's questions, including questions concerning when repairs  
25 would be completed, how repairs would be paid for, and what  
26 arrangements were being made with contractors, were not answered;

27 (15) by October 2022, a claims adjuster informed

1 Aransas County that Regional Pool Alliance had instructed the  
2 claims adjuster not to provide any information or otherwise  
3 communicate with Aransas County;

4 (16) in January 2023, in response to a direct question  
5 from the county attorney's office of Aransas County, Regional Pool  
6 Alliance informed Aransas County that there was no more money to  
7 fund the repairs to Aransas County's facilities;

8 (17) Aransas County later learned that Regional Pool  
9 Alliance submitted claims on all of the properties owned by various  
10 governmental entities and damaged by Hurricane Harvey together and  
11 received payments from the insurance carriers in large lump sums;

12 (18) Regional Pool Alliance made no effort to  
13 segregate the funds received by project or even by governmental  
14 entity, and funds paid by the insurance carriers for damages to the  
15 Aransas County facilities were commingled with funds paid to  
16 Regional Pool Alliance for damages to other governmental entities'  
17 facilities along the Texas coast;

18 (19) now Regional Pool Alliance has run out of money to  
19 reconstruct Aransas County's facilities and refuses to pay the full  
20 value of Aransas County's claims;

21 (20) critical facilities in Aransas County remain  
22 unfinished, and Aransas County faces a significant fiscal challenge  
23 due to nonpayment of millions of dollars of insurance proceeds as a  
24 result of Regional Pool Alliance's failure to provide the claims  
25 services and disaster-recovery services it promised;

26 (21) additional Aransas County facilities, including  
27 the courthouse annex, the county tax assessor-collector's office,

1 and the transfer station, were damaged by Hurricane Harvey but have  
2 not been fully repaired, remediated, or replaced;

3 (22) the lack of fully operational county facilities  
4 has hindered Aransas County's ability to provide governmental  
5 services and facilities to people living in and visiting the  
6 county;

7 (23) Regional Pool Alliance has been named as a  
8 defendant in at least two lawsuits related to Hurricane Harvey and  
9 has asserted that it is immune from suit as a distinct governmental  
10 unit; and

11 (24) Aransas County seeks to adjudicate its claims  
12 against Regional Pool Alliance arising from Regional Pool  
13 Alliance's failures to carry out the services it promised to  
14 Aransas County and to obtain recovery from Regional Pool Alliance  
15 on behalf of Aransas County and its residents; now, therefore, be it

16 RESOLVED by the Legislature of the State of Texas, That  
17 Aransas County is granted permission to sue Regional Pool Alliance,  
18 and Regional Pool Alliance's governmental immunity to suit and from  
19 liability is waived, with respect to any cause of action arising  
20 from Regional Pool Alliance's conduct in connection with Aransas  
21 County's losses from Hurricane Harvey, including a claim for:

22 (1) recovery under Chapter 134, Civil Practice and  
23 Remedies Code;

24 (2) a violation of Chapter 541, Insurance Code;

25 (3) a violation of Chapter 542, Insurance Code;

26 (4) negligent undertaking;

27 (5) negligent misrepresentation;

1           (6) fraud;

2           (7) quantum meruit;

3           (8) unjust enrichment; or

4           (9) money had and received; and, be it further

5       RESOLVED, That the suit authorized by this resolution shall  
6 be brought in Aransas County; and, be it further

7       RESOLVED, That Kathleen Hicks, Director of Administration  
8 for Regional Pool Alliance, be served process.