

By: Kolkhorst

S.C.R. No. 44

CONCURRENT RESOLUTION

1 WHEREAS, Aransas County alleges that:

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

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

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

11 (B) pursuing full payment of those claims;

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

15 (D) ensuring satisfactory completion of
16 construction projects;

17 (3) Aransas County paid annual premiums, assessments,
18 fees, and surcharges to Regional Pool Alliance from 2012 through
19 2022 in exchange for comprehensive insurance coverage for its
20 property and, through Regional Pool Alliance, was named as an
21 insured in various contracts with insurers or insurance carriers
22 for property and casualty insurance to cover losses, including
23 losses due to storm damage caused by natural disasters, such as
24 hurricanes;

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

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

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

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

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

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

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

27 (A) the complete destruction of the Aransas

1 County Courthouse and Aransas County Aquarium;

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

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

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

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

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

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

26 (15) by October 2022, a claims adjuster informed
27 Aransas County that Regional Pool Alliance had instructed the

1 claims adjuster not to provide any information or otherwise
2 communicate with Aransas County;

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

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

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

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

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

25 (21) additional Aransas County facilities, including
26 the courthouse annex, the county tax assessor-collector's office,
27 and the transfer station, were damaged by Hurricane Harvey but have

1 not been fully repaired, remediated, or replaced;

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

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

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

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

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

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

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

25 (4) negligent undertaking;

26 (5) negligent misrepresentation;

27 (6) fraud;

1 (7) quantum meruit;

2 (8) unjust enrichment; or

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

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

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