By:  Middleton H.B. No. 4419

A BILL TO BE ENTITLED

AN ACT

relating to settlement and resolution of claims against the Texas Windstorm Insurance Association.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 2210.573(a) and (f), Insurance Code, are amended to read as follows:

Sec. 2210.573.  FILING OF CLAIM; CLAIM PROCESSING. (a) Subject to Section 2210.205(b), an insured must file a claim under an association policy not later than the first anniversary of the date on which the damage to property that is the basis of the claim occurs. For purposes of this Section, an insured is only required to file one claim under an association policy per event. After a claim has been filed, all losses under an association policy for the same event shall be deemed claimed.

(f)  In a notice described by Subsection (d)(2) or (3), the association must provide [~~inform~~] the claimant with [~~of~~], as applicable:

(1)  a detailed explanation of the portion of the loss for which the association accepts coverage and the amount of loss the association will pay;

(2)  a detailed explanation of the portion of the loss for which the association denies coverage and a detailed summary of the manner in which the association determined not to accept coverage for that portion of the claim; and

(3)  the time limit to:

(A)  request appraisal under Section 2210.574 of the portion of the loss for which the association accepts coverage; and

(B)  provide notice of intent to bring an action as required by Section 2210.575.

SECTION 2.  Section 2210.5731, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c)  If the association fails to make payment within the timeline established by Subsection (a), the association shall pay an additional interest at a rate of 18 per cent per annum on the amount of the claim that has not been paid. Interest shall begin to accrue on the date after the payment became past due until the claim has been paid.

SECTION 3.  Section 2210.574, Insurance Code, is amended to read as follows:

Sec. 2210.574.  DISPUTES CONCERNING AMOUNT OF ACCEPTED COVERAGE. (a) If the association accepts coverage for a claim in full and a claimant disputes only the amount of loss the association will pay for the claim, or if the association accepts coverage for a claim in part and a claimant disputes the amount of loss the association will pay for the accepted portion of the claim, the association shall provide to the claimant [~~may request from the association~~] a detailed summary of the manner in which the association determined the amount of loss the association will pay for each portion of the accepted claim.

(b)  If a claimant disputes the amount of loss the association will pay for a claim or a portion of a claim, the claimant, not later than the 60th day after the date the claimant receives the notice described by Section 2210.573(d)(1) or (2), may demand appraisal in accordance with the terms of the association policy.

(c)  If a claimant, on a showing of good cause and not later than the 15th day after the expiration of the 60-day period described by Subsection (b), requests in writing that the 60-day period be extended, the association may grant an additional 30-day period in which the claimant may demand appraisal.

(d)  If a claimant demands appraisal under this section:

(1)  the appraisal must be conducted as provided by the association policy; [~~and~~]

(2)  the appraisal must be completed within a timeframe agreed upon in writing by the appraisers of the parties, or as ordered by an umpire, but may not exceed 180 days after the date an appraisal is demanded;

(3)  the association shall adequately detail the scope of the appraisal, including, as applicable, a list of any portions of the claim that have been accepted; and

(4)  the claimant and the association are responsible in equal shares for paying any costs incurred or charged in connection with the appraisal, including a fee charged under Subsection (e).

(e)  If a claimant demands appraisal under this section and the appraiser retained by the claimant and the appraiser retained by the association are able to agree on an appraisal umpire to participate in the resolution of the dispute, the appraisal umpire is the umpire chosen by the two appraisers. If the appraiser retained by the claimant and the appraiser retained by the association are unable to agree on an appraisal umpire to participate in the resolution of the dispute, the commissioner shall select an appraisal umpire from a roster of qualified umpires maintained by the department. The department may:

(1)  require appraisers to register with the department as a condition of being placed on the roster of umpires; and

(2)  charge a reasonable registration fee to defray the cost incurred by the department in maintaining the roster and the commissioner in selecting an appraisal umpire under this subsection.

(f)  If the claimant and the association fail to reach a settlement agreement within 180 days from the date of the appraisal, interest shall begin to accrue at a rate of 10 per cent per annum on the higher of the appraised values. Once a settlement has been reached, the amount of accrued interest shall be added to the settlement amount and paid by the association.

(g)  Except as provided by Subsection (h) [~~(g)~~], the appraisal decision is binding on the claimant and the association as to the amount of loss the association will pay for a fully accepted claim or the accepted portion of a partially accepted claim and is not appealable or otherwise reviewable. The appraisal decision becomes binding once it is signed by the umpire and the appraiser for the claimant or the association. A claimant that does not demand appraisal before the expiration of the periods described by Subsections (b) and (c) waives the claimant's right to contest the association's determination of the amount of loss the association will pay with reference to a fully accepted claim or the accepted portion of a partially accepted claim.

(h) [~~(g)~~]  A claimant or the association may, not later than the 30 days after [~~second anniversary of~~] the date of an appraisal decision becomes binding, give notice that the claimant or association will dispute the appraisal decision. Within 30 days after such notice is provided, the claimant or association may file an action in a district court in the county in which the loss that is the subject of the appraisal occurred to modify the appraisal decision, or to vacate the appraisal decision and begin a new appraisal process only if:

(1)  the appraisal decision was obtained by corruption, fraud, or other undue means;

(2)  the rights of the claimant or the association were prejudiced by:

(A)  evident partiality by an appraisal umpire;

(B)  corruption in an appraiser or appraisal umpire; or

(C)  misconduct or wilful misbehavior of an appraiser or appraisal umpire; or

(3)  an appraiser or appraisal umpire:

(A)  exceeded the appraiser's or appraisal umpire's powers;

(B)  refused to postpone the appraisal after a showing of sufficient cause for the postponement;

(C)  refused to consider evidence material to the claim; or

(D)  conducted the appraisal in a manner that substantially prejudiced the rights of the claimant or the association.

(i) [~~(h)~~]  Except as provided by Subsection (h) [~~(g)~~], a claimant may not bring an action against the association with reference to a claim for which the association has accepted coverage in full.

SECTION 4.  Section 2210.5741, Insurance Code, is amended to read as follows:

Sec. 2210.5741.  REPLACEMENT COST COVERAGE CLAIM PROCESSING. (a) After the association accepts coverage for a claim in full or in part, a claimant whose association policy includes replacement cost coverage for a [~~the~~] claim may request the replacement cost payment [~~by submitting to the association documentation of the cost and completion of the repairs related to the claim not later than the 545th day after the date the claimant receives a notification under Section 2210.573(d)(1) or (2)~~].

(b)  Not later than the 60th [~~30th~~] day after the date the association receives a request [~~documentation~~] under Subsection (a), the association shall provide the claimant, in writing, notification of:

(1)  the amount of the replacement cost payment the association will make; and

(2)  the deadline to request appraisal under this section.

(c)  The association shall pay the amount described by Subsection (b)(1) not later than the 10th day after the date notification is provided under Subsection (b).

(d)  If a claimant has not demanded appraisal with respect to a claim under Section 2210.574 and the claimant disputes the replacement cost amount the association will pay with respect to the claim, the claimant may demand appraisal of the replacement cost amount not later than the 30th day after the date the claimant receives the notification under Subsection (b). A claimant may demand appraisal under this section without regard to whether [~~all~~] repairs related to the claim have begun or are complete.

(e)  Except with respect to the deadlines applicable to an appraisal under this section, the appraisal under this section shall be conducted in the same manner as an appraisal demanded under Section 2210.574.

(f)  If a claimant's association policy includes replacement cost coverage, the written notification provided to the claimant under Section 2210.573(d)(1) or (2) must notify the claimant of the deadlines under this section for[~~:~~

~~(1)  completing repairs and submitting documentation under Subsection (a); and~~

~~(2)~~]  demanding appraisal under this section.

SECTION 5.  Section 2210.575(a), Insurance Code, is amended to read as follows:

(a)  If the association denies coverage for a claim in part or in full and the claimant disputes that determination, the claimant, not later than the expiration of the limitations period described by Section 2210.577(a), but after the date the claimant receives the notice described by Section 2210.573(d)(2) or (3), must provide the association with notice that the claimant intends to bring an action against the association concerning the partial or full denial of the claim. The date the last notice by the association under Section 2210.573(d)(2) or (3) is received shall determine the deadline to provide a notice of intent to bring action under this section.

SECTION 6.  Section 2210.576, Insurance Code, is amended to read as follows:

Sec. 2210.576.  ISSUES BROUGHT TO SUIT; LIMITATIONS ON RECOVERY. (a) In [~~The only issues a claimant may raise in~~] an action brought against the association under Section 2210.575 a claimant may raise [~~are~~]:

(1)  whether the association's denial of coverage was proper; and

(2)  the amount of the damages described by Subsection (b) to which the claimant is entitled, if any.

(b)  Except as provided by Subsections (c) and (d), a claimant who prevails in [~~that brings~~] an action against the association under Section 2210.575 shall [~~may~~] recover [~~only~~]:

(1)  the covered loss payable under the terms of the association policy less, if applicable, the amount of loss already paid by the association for any portion of a covered loss for which the association accepted coverage;

(2)  prejudgment interest beginning the 11th [~~from the first~~] day after the date specified in Section 2210.573(d)[~~Section 2210.5731 by which the association was or would have been required to pay an accepted claim or the accepted portion of a claim,~~] at the prejudgment interest rate provided in Subchapter B, Chapter 304, Finance Code; and

(3)  court costs and reasonable and necessary attorney's fees.

(c)  Nothing in this chapter, including Subsection (b), may be construed to limit the consequential damages, or the amount of consequential damages, that a claimant may recover under common law in an action against the association.

(d)  A claimant that brings an action against the association under Section 2210.575 may, in addition to the covered loss described by Subsection (b)(1) and any consequential damages recovered by the claimant under common law, recover damages in an amount not to exceed the aggregated amount of the covered loss described by Subsection (b)(1) and the consequential damages recovered under common law if the claimant proves by clear and convincing evidence that the association mishandled the claimant's claim to the claimant's detriment by intentionally:

(1)  failing to meet the deadlines or timelines established under this subchapter without good cause, including the applicable deadline established under Section 2210.5731 for payment of an accepted claim or the accepted portion of a claim;

(2)  disregarding applicable guidelines published by the commissioner under Section 2210.578(f);

(3)  failing to provide the notice required under Section 2210.573(d);

(4)  rejecting a claim without conducting a reasonable investigation with respect to the claim; [~~or~~]

(5)  denying coverage for a claim in part or in full if the association's liability has become reasonably clear [~~as a result of the association's investigation with respect to the portion of the claim that was denied~~];

(6)  unreasonably delaying payment of a claim in part or in full once the liability of the association has become reasonably clear; or

(7)  providing an amount of loss the association will pay, in a notice under Section 2210.573, that is substantially less than the amount awarded in an appraisal or as determined by a factfinder in an action under this chapter.

(e)  For purposes of Subsection (d), "intentionally" means actual awareness of the facts surrounding the act or practice listed in Subsection (d)(1), (2), (3), (4), or (5), coupled with the specific intent that the claimant suffer harm or damages as a result of the act or practice. Specific intent may be inferred from objective manifestations that the association acted intentionally or from facts that show that the association acted with flagrant disregard of the duty to avoid the acts or practices listed in Subsection (d)(1), (2), (3), (4), or (5).

SECTION 7.  The Texas Windstorm Insurance Association shall amend the association 's plan of operation to conform to the changes in law made by this Act not later than the 60th day after the effective date of this Act.

SECTION 8.  This Act takes effect September 1, 2021.