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## Flurry of Litigation Likely in Wake of Texas Storm, Power Outages

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Coverage litigation arising from Winter Storm Uri's impact on Texas is likely to be significant, due to the vast number of businesses hit both within the state and beyond, legal experts say.

As the snow, ice and freeze also triggered widespread power outages and rolling blackouts in Texas, there are several issues that could complicate the claims process for commercial property policyholders.

The storm, which affected a broad swath of states, particularly in the southern U.S., could be the driver of record first-quarter insured property catastrophe losses for U.S. property/casualty insurers, A.M. Best Co. said in a Feb. 19 report.

Many of the property losses will be from water damage caused by frozen and broken pipes, and extended power outages could cause losses for reinsurers as well as primary insurers, Best said in the report.

Property/casualty insurers could pay an estimated \$18 billion in damages, more than half of which will be from Texas, with the majority commercial losses, according to catastrophe modeling company Karen Clark & Co. Its estimate includes commercial, industrial and business interruption losses, as well as home and auto.

The storm will generate enormous property claims and business interruption claims, both from businesses shut down and unable to operate and from the energy sector itself, said Leslie Thorne, partner at Haynes and Boone LLP in Austin.

"A lot of these plants couldn't operate to get energy, electricity in the system because they were frozen themselves," she said. Many of those companies are going to be looking to their insurance, considering they weren't able to deliver at a critical time, Ms. Thorne said.

The event has the potential to give rise to business litigation that triggers policies beyond commercial property, such as commercial general liability and directors and officers liability claims, she said.

Already several lawsuits have been filed against Austin-based power grid operator the Electric Reliability Council of Texas, or ERCOT, and electricity transmission company CenterPoint Energy by family members of those who died and those who suffered property damage during last week's storm.

"Those claims are going to face a lot of headwinds in terms of the protection some of these companies have in the regulatory sphere. But they most certainly are going to trigger insurance," Ms. Thorne said.

Substantial litigation will arise from commercial property coverage and losses to businesses in Texas that were directly affected by the cold weather, power outages and rolling blackouts, said Pamela Hans, managing shareholder of Anderson Kill P.C.'s Philadelphia office.

There will also be litigation arising from contingent business interruption losses to companies located outside Texas that depended on suppliers in the affected area, she said.

"The lion's share of coverage will be found under first party property policies," Ms. Hans said.

Policies including coverage for loss of utility service generally identify a specific interruption period before coverage is triggered, typically 24 or 48 hours, and the extent of the potential losses will depend on how long the power outages last, Best said in its report.

Commercial property policyholders should review the terms of their insurance policies and endorsements carefully, Ms. Hans said.

“Not every policy covers service interruption losses. Many policies do, but typically by an endorsement geared to that loss, so policyholders can’t assume one way or another,” Ms. Hans said.

With business interruption claims, there’s often “a lot of back and forth and disputes” between policyholders and their insurers on what loss can be attributed to what, said Tamara D. Bruno, partner, Pillsbury Winthrop Shaw Pittman LLP, based in Houston.

If a company had physical damage such as frozen pipes or other physical damage that was not necessarily a result of lack of power, or wasn’t only a result of lack of power, then potential disputes with insurers as to causation can arise, she said.

“Would you have had that loss if it was just the ice, or was it ice working together with lack of power, and do you have an exclusion and how do you work through that in the policy language and see whether you have coverage or not,” Ms. Bruno said.

Insurers are likely to assert several defenses to coverage and claim that different exclusions preclude coverage, Robert Manley and Michael Miguel, principals at McKool Smith in Dallas and Los Angeles wrote in an email.

“The typical issue to be resolved is whether there was a ‘business interruption’ in the first place,” they wrote.

Insurers traditionally argue policies are intended to cover complete cessations of operations, not limitations in operations.

“So, for example, if pipes burst in one part of a manufacturing facility, and to protect its workers the operator chose to close down the entire facility,” there could be issues as to whether a business decision, rather than physical damages, caused the cessation of all operations, Mr. Manley and Mr. Miguel wrote.

Protection and preservation of property costs are often covered by commercial property policies particularly if those efforts connect to a covered cause of loss, Ms. Bruno said.

Policyholders should keep track of amounts spent to protect and remediate property, she said. “We advise that clients consult with forensic accountants early on to make sure that those records are being kept and managed in a way that allows them to present those to the insurer later,” she said.