

THOMPSON COE

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Memorandum

To: Jennifer Cawley
From: Jay A. Thompson
Date: August 28, 2017
Re: Questions Surrounding TDI Bulletins and Emergency Proclamations

The TDI has recently issued several bulletins relating to how insurers should respond as a result of Hurricane Harvey. Several of these bulletins are similar to those issued in 2008 after Hurricane Ike. These bulletins are not mandatory at the present time and not likely to be made mandatory. Even so, it is my recommendation that Texas insurers do their best to comply with the bulletins even though they are not mandatory.

As discussed below, the Governor has broad authority to issue proclamations after a disaster. Additionally, the Texas Supreme Court has just released an Emergency Order applicable to all courts regardless of the location. The Court order stated:

Pursuant to Section 22.0035(b)3 of the Texas Government Code, all courts in Texas should consider disaster-caused delays as good cause for modifying or suspending all deadlines and procedures—whether prescribed by statute, rule, or order—in any case, civil or criminal.

This Order expires September 27, 2017 unless extended by the Courts. This Order only applies to Court proceedings.

The Governor has broader powers in the event of an emergency. Under TEX. GOVT. CODE § 418.012, the Governor is given the power to issue executive orders that have the force and effect of law. The language in this section of the law reads as follows:

§418.012. EXECUTIVE ORDERS. Under this chapter, the governor may issue executive orders, proclamations, and regulations and amend or rescind them. Executive orders, proclamations, and regulations have the force and effect of law.

Under Section 418.016, the Governor is given broad powers to suspend provisions of state law. This language reads as follows:

Sec. 418.016. SUSPENSION OF CERTAIN LAWS AND RULES. (a) The governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.

The Governor has issued 3 proclamations declaring certain counties as disaster. My rough count shows about 100 counties are included. He has not issued any proclamations specifically suspending any law.

I would recommend that insurers apply the protections requested in the Bulletins on a statewide basis because there may be a large number of individuals from the affected that are living temporarily in other parts of the state. I would recommend that insurers apply the protections suggested in the TDI bulletins until September 27, 2017 for now.