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COMMITTEE ON EDUCATION

RQ-0318-KP
FILE# ML-48662-19
I.D.# 48662

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December 10, 2019

The Honorable Ken Paxton, *Attorney General*
Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Dear General Paxton,

Per Section 402.042 of the Texas Government Code, I respectfully request your opinion on matters related to the Texas Windstorm Insurance Association (TWIA) and related legislation passed by the 86th Texas Legislature during the 2019 session, specifically: House Bill 1900 and Senate Bill 615.

Background

In 2017 Hurricane Harvey, a Category 4 storm, made landfall with gusts exceeding 150 mph, record-level flooding in some locations and responsible for taking the lives of 68 individuals. Exactly one year later, the TWIA Board of Directors voted to increase rates by ten percent on all residential and commercial policyholders in the midst of ongoing recovery efforts.

Governor Abbott responded by suspending the Texas Department of Insurance Commissioner's authority to consider TWIA's request to raise rates by ten percent until June 16, 2019. The Governor's directive recognized that, "*a rate increase at this time would negatively impact the people of the Gulf Coast*" and "*deprive the Legislature of the opportunity to address any actuarial deficiency in TWIA during the upcoming legislative session and could force a decision that hinders efforts to cope with the declared disaster*". In response to the Governor's call for action, legislators thoroughly addressed the administration, oversight and financial responsibilities of TWIA by passing H.B. 1900 and S.B. 615.

Concern

Since going into effect, the new laws call into question the validity and legal standing of recent actions and actuarial analysis by TWIA and its third-party vendors responsible for assisting the association with vital statutorily required administrative, financial and actuarial functions. These questions must be weighed heavily against the recently enacted legislation and the premise by which TWIA has based its administrative actions and fiduciary duties. Such conflict renders any action at this time by the TWIA Board to increase rates against its policyholders as improper.

Outstanding Legal Questions

The following information outlines questions previously presented to TWIA that remain unsatisfactorily and insufficiently answered. These questions have been raised by various stakeholders including members of the legislature, constituents, business leaders and organizations, a professional actuary, the Office of Public Insurance Counsel, members of the TWIA Actuary and Underwriting Committee and members of the TWIA Board itself.

- 1) Cost of 2019 Financing Above the Statutory Minimum - The Texas Insurance Code (TIC), Sec. 2210.453 requires TWIA to make available loss funding in an amount not less than the Probable Maximum Loss (PML) for the association of a catastrophe year with a probability of one in 100. TWIA's 2019 reinsurance and catastrophe bond program, effective June 1, 2019 to May 31, 2020, represents a total of \$4.2 billion available to fund losses, an amount in excess of the statutorily required minimum threshold. The total available loss funding includes \$2.1 billion in traditional reinsurance and a combination of new and previously outstanding catastrophe bonds with an attachment point of \$2.1 billion. The cost of TWIA's reinsurance and bond purchase totals \$90.2 million.
 - Is TWIA and/or its Board of Directors in violation of new law, TIC Sec. 2210.453 (d), requiring member insurer companies to pay for the cost of the association's 2019 funding sources in excess of the PML or statutory minimum level?
- 2) Hurricane Harvey Loss Payments - At the end of September 2019, TWIA reported a net income of \$21.7 million due to Hurricane Harvey reserve adjustments, equal to \$90 million, that when excluded represents a net income of \$111.7 million. As noted in the board materials for the December 10, 2019 TWIA board meeting, A2. Management Discussion and Analysis, *"the YTD results do not include any member assessment income to offset Hurricane Harvey reserve adjustment"*. Further stated, *"such income will be reported subject to the Board requesting and the Commissioner approving such a member assessment in the future"*. To date, TWIA has secured \$1.61 billion in funding to pay Hurricane Harvey losses and subsequently paid \$1.54 billion in losses and loss adjustment expenses, leaving \$65.4 million in remaining funds. In a Memorandum dated November 15, 2019 from TWIA Chief Financial Officer Jerry Fadden to TWIA General Manager John Polak, Mr. Fadden explains, *"TWIA must ensure adequate funds are available from its prescribed funding sources in advance and cannot rely on operating funds to bridge the receipt of this funding"*.
 - Is TWIA and/or its Board of Directors in violation of new law, TIC Sec. 2210.071(b) as added by the 2019 legislature, prohibiting the use of premium and

other revenue earned in a subsequent year to pay losses from a catastrophe such as Hurricane Harvey?

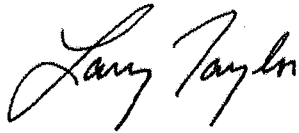
- 3) Hurricane Harvey Ultimate Loss Estimate - TWIA's total loss estimate for Hurricane Harvey is \$1.7 billion, an increase of \$90 million as identified in Q2 of 2019. To date the TWIA board has not taken action to approve the assessment of its potential Class I statutory responsibility totaling \$500 million. According to a memo, dated November 15, 2019, by TWIA General Manager John Polak, *"we decided to postpone seeking approval for a commensurate increase in our funding sources until we had more experience to validate this estimate"*.
 - Is TWIA and/or its Board of Directors in violation of new law, TIC Sec. 2210.1052 requiring an emergency meeting when the TWIA chief financial officer or chief actuary of the association determines member insurers may be subject to an assessment as established by the ultimate loss estimate?
- 4) Probable Maximum Loss - The PML is a critical point of information to help identify the level of funding statutorily necessary for TWIA to remain actuarially sound. All TWIA funding resources above the established PML are the fiduciary responsibility of TWIA member insurers as prescribed by the newly passed TIC Sec. 2210.453(d). TWIA's chief financial officer and chief actuary work in conjunction with their third-party contractor, Guy Carpenter and/or Guy Carpenter Securities, to provide a statutorily required annual rate analysis review. The analysis serves as the premise by which TWIA's board and/or its actuary/underwriting committee establishes the PML. Therefore, Guy Carpenter serves not only as the broker and agent responsible for placing the purchase of reinsurance on behalf of TWIA, but also the contractor responsible for delivering the modeling and rate analysis by which a PML is established.
 - Is TWIA, its Board of Directors, its staff and/or its third-party vendors in violation of any conflict of interest provision set forth by TIC Chapter 2210, TWIA's Plan of Operation or by Texas Department of Insurance Rule, as it relates to their fiduciary role in serving residential and commercial policyholders not otherwise eligible to receive wind coverage along the coast?
- 5) TWIA Board Vacancies - TWIA is governed by a nine-member Board of Directors appointed by the Texas Department of Insurance Commissioner and is composed of three tier-one coastal members, three inland members who reside 100 miles or greater from the coast line and three industry representatives, who actively write and renew windstorm insurance along the coast. Members are voluntary and must have insurance, business and/or actuary experience to serve on the TWIA board. Currently, there are two vacancies - one inland member and one seacoast member vacancy.
 - Is TWIA and/or its Board of Directors in violation of any professional or ethical code of conduct standard prohibiting members of a state governmental body from taking an action that may financially discriminate or pose a financial burden on residents located in a specific geographic region of the state without proper representation as it is prescribed by state law under TIC Chapter 2210.
- 6) Other Identified Concerns - Our office is in receipt of correspondence from a number of stakeholders and key participants in the TWIA rate process that have identified many concerns that also warrant careful review by your office. I have enclosed these supplemental documents so they will be considered in conjunction with my request for an opinion.

- Actuarial Rate Review | Presented by: Rep. Mayes Middleton on August 6, 2019 | Commissioned by: Coastal Windstorm Insurance Coalition | Prepared by Stephen A. Alexander MBA, FCAS, FSA, MAAA
- Letter dated: October 1, 2019 | Submitted by: Melissa Hamilton | Public Counsel | Office of Public Insurance Counsel
- Letter dated: December 5, 2019 | Submitted by: Melissa Hamilton | Public Counsel | Office of Public Insurance Counsel

Conclusion: Request for Temporary Injunction and Legal Opinion

Therefore, I respectfully request an immediate and temporary injunction against TWIA and its Board of Directors from taking any further action on policyholder rates until your office is able to issue an official legal opinion on the questions raised in this letter and effectively uphold the enactment and intent of H.B. 1900 and S.B. 615 as passed by the 86th Texas Legislature.

Respectfully,

A handwritten signature in cursive script that reads "Larry Taylor".

Larry Taylor, *Chairman*
Texas Senator
Senate District 11