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Claim and Legal Considerations in the Resolution of Automobile Claims in Catastrophic Weather Events: Planning, Settlement and Fraud

I. Impact of the Issue

In 2017 Hurricanes Harvey and Irma resulted in damages exceeding \$200B and more than 1 million vehicles severely damaged, effecting insurers and insurance consumers across the country. The speed, efficiency, expense and diligence with which an insurance carrier resolves its claims effects subsequent rates in the affected area and the availability of insurance across the country. While insurers have been adept at modeling the potential impact of property claims, the modelling of auto claims and the fraud impact of them has been much more difficult for a multitude of reasons, most notably being the fluid nature of the value of vehicle, the portability of them and the significant fraud issues both during and post event. All of these issues must be balanced with the consumer in mind for customer satisfaction and fair claim handling purposes. New technology provides answers to balancing these variables, from planning to execution to fraud prosecution.

II. Planning

In most instances, carriers and consumers have a degree of warning as to the location and severity of the event. This is the time to mobilize the requisite units to respond to consumers' needs and prepare for collection and response to fraud indicators. Aerial photos with advanced scanning ability may be used to spot pre-event vehicle locations. The Vehicle Identification Numbers (VIN's) of the vehicles may be processed through commercially available databases to determine the value of the vehicles and any preexisting issues. A fraud unit dedicated to the event to ensure the efficient referral of potential red flag indicators needs to be assembled and prepared. Other items for advancing claims and deterring fraud include:

- First Notice of Loss professionals staged
- Special catastrophic claim numbers
- Payment options; check, electronic fund transfer, debit cards, etc.
- Immediate access to tools to quickly and accurately determine the value of vehicles
- Towing, storage, salvage and total loss functions

During the event

While the event is actually occurring is when technology can really have an impact. It is not uncommon for owners of personal and commercial vehicles to relocate them to nearby waterways with the intent of having the vehicles flooded for insurance proceeds. People may be evacuating the area so that the vehicle isn't at the listed residence, important if the owner later tries to make a claim. The ability to catalog the location of vehicle can be particularly effective if all of the vehicles in the area are underwater and finding them is an issue. Technology can also come into play with tools that can alert owners or claim professionals as to the location of their vehicles based upon their VIN number. Companies who collect millions of pieces of vehicle data daily can quickly report when a lost vehicle is reported at a salvage or impound yard, body shop or tow yard.

III. Red Flag Indicators for Fraud referral

If an organization has prepared itself pre-event by running its VIN portfolio through a vehicle data base it will be prepared to face some of the upfront fraud. The data reports will be able to identify:

- Cloned vehicles
- Title washed vehicles
- Lease vehicles with high mileage
- Vehicles with non-repaired prior accidents
- Vehicles reported as exported but not re-imported

Armed with this information Special Investigative Units (SIU's) can review claims made on those vehicles for their veracity.

Catastrophic events also provide ample opportunity for thieves to steal vehicles, have titles reissued on them following a stolen VIN then report them as damaged by flood on policies. Hence date of policy issuance may be another red flag indicator for SIU referral. As patterns emerge from the activities, legal counsel adept at the collection and analysis of the information can then be utilized. Working with organization such as NICB and their databases can alert multiple carriers simultaneously for cooperation in the prosecution under applicable RICO statutes. These rings are also often in other hurricane related fraud such as:

- Impersonation of federal law enforcement officials
- Identity theft
- Fraudulent solicitations for donations and charitable giving
- Price gouging
- Many types of violent crime relating to theft or seclusion of individuals while the thieves impersonate them.

Further coordination can be made with the National Center for Disaster Fraud (NCDF), established by the US Justice Department following Hurricane Katrina. The NCDF has 1-800 and other contact means available 24/7 for the reporting of disaster fraud. Complaints are

still pouring in to the NCDF and started at a much higher rate than any prior disasters since the inception of the agency.

In addition to fraud at the time of the disaster, it continues on for many months following the event. The Coalition Against Insurance Fraud (CAIF) estimates that more than 300,000 flooded vehicles will be cleaned up, re-titled in another state and sold to an unsuspecting public following the recent hurricanes. Sometimes instead of a straight title retransfer in other states sellers will take the VIN from one vehicle and use it to register a different vehicle in another state. Again, technological services and data bases are available to help thwart these practices. Reports are available to the public and insurers which detail a vehicles registration history and whether another vehicle exists carrying the same VIN number.

IV. Timely Resolution of Legitimate Claims

Duties of a Carrier to Timely Resolve Claims:

Insurance carriers have a duty of good faith and fair claims handling to their customers and states' insurance codes provide protections against unfair claim settlement practices. These statutes require appropriate investigations, good faith efforts to settle claims, and prohibit offering substantially less than the amount ultimately recovered in a suit brought by the policy holder. More specifically, the relevant portions of the Texas unfair claim settlement practices prohibit an insurer from: failing to adopt and implement reasonable standards for the prompt investigation of claims arising under the insurer's policy; not attempting in good faith to effect a prompt, fair, and equitable settlement of a claim submitted in which liability has become reasonably clear; and compelling a policyholder to institute a suit to recover an amount due under a policy by offering substantially less than the amount ultimately recovered in a suit brought by the policyholder. Tex. Ins. Code § 542.003(b)(1)-(3). Texas courts have asserted that insurers must exercise the degree of care and diligence which an ordinarily prudent person would exercise in the management of his own business in responding to settlement demands within policy limits. *Travers v. State Farm Mut. Auto. Ins. Co.*, 930 S.W. 2d 862, 867 (Tex. App. 1996). This duty of ordinary care also extends to investigation, preparation for defense of a lawsuit, and trial of a case. *Id.*

Similarly, Florida statutes deem the following, among others, unfair claim settlement practices when performed or committed with such frequency so as to indicate a general business practice: failing to adopt or implement standards for the proper investigation of claims; failing to acknowledge and act promptly upon communications with respect to claims; and failing to pay undisputed amounts of partial or full benefits owed under property insurance policies within 90 days after an insurer receives notice of an insurance claim, determines the amounts of partial or full benefits, and agrees to coverage. Fla. Stat. 626.9541(1)(i). The Southern District of Florida delineated the factors that Florida courts will consider when determining an insurer's liability for unfair claim settlement practices when examining the totality of the circumstances: 1. the insurer's effort to resolve promptly the coverage issues or otherwise limit any potential prejudice to the insured; 2. the substance of the coverage disputes or the weight of the legal authority on the coverage issue; and the insurer's diligence or thoroughness in investigating the facts

specifically pertinent to coverage. *Shannon R. Ginn Const. Co. v. Reliance Ins. Co.*, 51 F. Supp. 2d. 1327, 1353 (S. D. Fla. 1999).

During disasters maintenance, repair and bill of sale records are difficult to locate and policy holders have immediate need for settlement to secure new transportation. Many current total loss valuation practices utilize formats that do not take into consideration the detailed history of the vehicle at issue and the value of similar vehicles in the immediate vicinity. Many of the established value process ends at the year, make and model of the vehicle without regard to trim options and how well the model has been maintained. These same valuation models rely on national or large swath regional averages to determine the value of a vehicle. New technology which provides consumers and insurers with more exacting information can help to quickly resolve claims fairly, with higher customer satisfaction rates and more accurate expense and severity experience. Over the course of many hundreds of thousands of total loss resolutions the impact to the customers and carrier results can be substantial.

V. Post Disaster Considerations

The more than 300,000 flooded and refurbished vehicles going back on the roads following these latest hurricanes invite significant public safety and insurance carrier perils. Doctors warn of health hazards such as mold growth and bacteria such as coliform and E. Coli and petroleum products in flood water trapped in pockets of a vehicle. Mechanical damage to the vehicle can result in sudden failure of an operation of a car or deployment of an airbag while in operation. Insurers run the risk of insuring large numbers of these vehicles after the titles have been washed or VIN's cloned. Vehicles of this type are proven to have more accidents with higher severity. Insurers would be wise to utilize a service which would provide them with data from their portfolio's that would reveal these types of vehicles in their inventory.

Flowing Hurricane Sandy a number of seemingly reputable used car dealers we arrested for selling flooded and refurbished vehicles to an unsuspecting public. A NJ car dealer admitted to selling 7 flood vehicles with the aid of a DMV technician creating clean titles. Other dealerships have faced prosecution with entire car carriers full of flooded vehicles arriving on their lots, re-titled and ready to be sold. Backroom operations for these dealerships gain access to DMV systems to change title status from "for parts only" to clean titles. The Top 5 cities with flooded cars on the road are:

- Houston
- New York
- Philadelphia
- Dallas/Ft. Worth
- Chicago

Reputable vehicle history reports can spot these vehicles to warn unsuspecting consumers.

The purchase and driving of the flooded vehicle isn't just a financial peril. As mentioned before in the Narrative, the potential if not certainty of mechanical failure as the result of parts damaged from being submerged in salt and contaminated water is considerable. Diane Zielinski of Quakertown, PA, bought a used vehicle for her 17 year old son. The car engine virtually

exploded while the son was driving it on a rural road. Had the car been on a populated highway the impact could have been considerable. While Zielenki called the dealership her son went online and learned that his car had been flooded, given a salvage title, then the title was washed and a clean one was issued.