

**WOULD THE RECENT FREEZING TEMPERATURES IN TEXAS  
BE CONSIDERED A “FORCE OF NATURE” AND SUBJECT TO  
TEXAS INSURANCE CODE CHAPTER 542A**

It has been reported that the recent freezing weather, snow and ice storms across much of Texas and other states could be one of the most expensive natural catastrophes for insurers on record. The Wall Street Journal reported that property insurers face an estimated \$18 billion bill for damages to homes and businesses from the long stretch of frigid weather. Scism, Leslie, 2021, Feb. 19, *Winter Freeze Damages Expected To Hit 18 Billion From Burst Pipes, Collapsed Roofs*, Wall Street Journal, [www.wsj.com](http://www.wsj.com). Much of the damage stems from widespread freezing of pipes, which have burst leading to extensive water damage. *Id.* Further, while there was snow and ice, it was predominantly a freezing event and most of the claims are going to be related to water damage. *Id.*

In light of the estimated large number of freeze related claims on the horizon, there is a question in Texas as to whether the damage caused by the freezing temperatures, such as broken pipes and the resulting water damage, would fall under Texas Insurance Code Chapter 542A’s definition of “forces of nature.”

**Legislative History of Chapter 542A “The Hail Bill”**

In September of 2017, Section 542A of the Texas Insurance Code, also known as “The Hail Bill” (“Hail Bill”), came into effect. Advocates of the Hail Bill state that the bill was intended to curb litigation abuses arising from severe hailstorms that swept through Texas and left residential and commercial properties in a state of disrepair.

The Hail Bill added a new chapter to the Texas Insurance Code called “Chapter 542A Certain Consumer Actions Related to Claims for Property Damage,” and applies to first-party real property claims for damage or loss caused “wholly or partially” by “forces of nature”--including damage caused in whole or in part by earthquakes, wildfires, floods, tornados, lightning, hurricanes, hail, wind, snowstorms, or rainstorms.

Interestingly, the original version of the Hail Bill was not limited to “forces of nature,” i but applied to all first-party insurance claims (not just real property claims).. The original version of the bill also restricted the insured’s ability to bring a claim under the Deceptive Trade Practices Act (“DTPA”) and the Texas Insurance Code, and imposed numerous additional requirements on insureds.

The Hail Bill underwent significant changes before it finally passed. The Hail Bill defined “claim” as damages or losses that resulted from the “forces of nature” rather than simply hail. Additionally, the bill retained the 18% interest under the Prompt Pay statute for all first party claims (e.g., business interruption, data breach, auto and trucking, and real property loss not caused by a “force of nature”). The final version also removed the restrictions to bring a claim under the DTPA or the Texas Insurance Code.

## “Forces of Nature” Encompasses Weather Events

Texas Insurance Code Section 542A.001(2) defines “Claim” as

a first party claim that:

- (A) is made by an insured under an insurance policy providing coverage for real property or improvements to real property;
- (B) must be paid by the insurer directly to the insured; and
- (C) arises from damage to or loss of covered property **caused, wholly or partly, by forces of nature, including an earthquake or earth tremor, a wildfire, a flood, a tornado, lightning, a hurricane, hail, wind, a snowstorm, or a rainstorm.** (emphasis added)

There is very little in the way of case law that provides guidance in defining the term “forces of nature.” The limited authority, however, clarifies that “forces of nature” refer to weather-related events. *See, e.g., Jada Restaurant Group, LLC, v. Acadia Ins., Co.*, No. SA-20-CV-00807-XR, 2020 WL 5362071 (W.D. Tex. Sept. 8, 2020).

In *Jada*, on receipt of the insured’s pre-suit notice, the insurer, Acadia, promptly elected to accept responsibility for the adjuster under Chapter 542A. *Id.* at \*1. When Acadia was sued, it removed the suit to federal court, arguing that the adjuster must be dismissed under Texas Insurance Code §542A.006 because of its pre-suit election to accept responsibility for the adjuster. *Id.* at \*2. The court remanded the case to state court, finding that a virus is not a “force of nature” for purposes of Chapter 542A. *Id.* In reaching this decision, the court applied the canon of *noscitur a sociis*, or “a word may be known by the company it keeps.” *Id.* Stated differently, “words in a statute must be interpreted in the context of associated words.” *Id.* Thus, it found that because all the examples of perils listed in the statute are classic examples of forces of nature – *i.e.*, those involving forces of earth, wind, wildfire, and water--the statute must have intended weather to be the limit of its scope. *Id.* The application of the statute was not, however, limited by the doctrine of *ejusdem generis* to apply only to the listed perils. The court further noted that although “the court need not look to legislative history given the plain language of the statute,” its legislative history showed that the legislature was concerned with weather-related claims when it enacted 542A, not infectious disease claims. *Id.*; *see also, Lousi G. Orsatti, DDS. P.C. v. Allstate Ins. Co.* 5-20-CV-00840-FB-RBF, 2020 WL 5948269, at 5 (W.D. Tex., Oct. 7, 2020) (adopting the rationale in *Jada* and finding that Chapter 542A only applied to weather-related events).

## Do claims for water damage resulting from pipe bursts occurring during freezing conditions “arise wholly or partly, by forces of nature” under Chapter 542A?

The limited case law addressing Chapter 542A clarifies that “forces of nature” refers to weather-related events, but is not limited to the weather events listed in the statute following the word “including.” *See Jada* at \*3. This is consistent with Texas Government Code section 311.005(13) which provides that, when used in Texas statutes, the words “includes” and “including” are terms of enlargement and not of limitation or exclusive enumeration and use of the terms does not create

a presumption that components not expressed are excluded.” Tex. Gov’t Code §311.005 (13); *see also*, BRYAN A. GARNER, *GARNER’S MODERN AMERICAN USAGE* 44 (Oxford University Press) (2003) (stating that the word “includes” has “traditionally introduced a non-exhaustive list”).

The sub-freezing weather that occurred in Texas in February 2021 was an unexpected and uncontrolled weather event, just like the specified weather events in the statute. In fact, news outlets have reported that, for most of the State of Texas, the last time the temperatures dropped to similar levels was 1989, more than 30 years ago. Additionally, the fact that the power grids began to fail and large numbers of Texans lost power for extended periods of time indicates that these temperatures were not expected. Unlike *Jada*, in which the cause of the claimed loss was a virus, the likely cause of losses here would be, at least in part, the freezing temperatures that occurred in Texas. Just as a snowstorm, lightning, or wind is a natural weather condition, so are freezing temperatures. It is a condition which is not man-made and which may result in property damage. *See, e.g., Tejas Power Corp. v. Amerada Hess Corp.*, No. 14-98-346-CV, 1999 WL 605550, \*3 (Tex. App. – Houston [14th Dist.] Aug. 12, 1999, no pet.) (holding that freezing weather is an Act of God).

It is likely that, when confronted with the issue, courts would find that the freezing weather would be considered a “force of nature.” Therefore, claims for loss or damage as a result of those freezing temperatures— water damage due to bursting pipes— should be considered a “Claim” under Section 542A.001(2)(C). Notably, the statute’s definition of “Claim” provides that the loss or damage can be caused *wholly or partly* by forces of nature. Accordingly, evidence that the cause of the loss or damage was not *solely* attributable to the freezing weather should not preclude application of Chapter 542A.