

June 6, 2025

The Honorable Cassie Brown, Commissioner  
Via email: [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov)  
Texas Department of Insurance  
ATTN: Office of the Chief Clerk  
MC: GC-CCO  
PO Box 12030  
Austin, Texas 78711-2030

Re: DOCKET NO. 2854, Consideration of Petitions to Determine Underserved Areas for Texas FAIR Plan Property Owners' Association Insurance

Dear Commissioner Brown:

These comments are submitted on behalf of the Insurance Council of Texas (ICT), a property casualty insurance trade association with nearly 400 member insurers, many of whom are required to be members of the FAIR Plan. ICT previously participated in the rulemaking process related to HB 998, the 2023 legislation that allowed, under certain conditions defined in the statute, for common areas and facilities of a homeowners' association and common elements of a condominium owners' association to qualify for FAIR Plan coverage.<sup>1</sup> As noted in ICT's comments last year, the expansion of the FAIR Plan to cover non-residential property is significant and should be undertaken cautiously, in strict compliance with the statute and adopted rules.

As an initial matter, ICT believes it is important to clarify exactly what the current petitions under consideration entail. First, as noted above, the only potential FAIR Plan coverage expansion allowed under HB 998 is for common areas owned by a POA. *See* Tex. Ins. Code §2211.001(6-a). The petitions are at times unclear as to whether only common area coverage is being discussed, as opposed to individually owned property. The designated area for POAs is defined in Rule 5.9330 as 10 miles inland from TWIA's boundaries. POA risks within this designated area (and, as discussed below, within whatever portion of that area is designated underserved) must still make individual applications for coverage and demonstrate coverage is unavailable through at least two declinations by carriers writing in the designated area for POAs and statewide.

Second, as noted in TDI's order adopting rules related to the "designated area" for POAs as added by HB 998, "[a]fter determining the designated area, Insurance Code Sec. 2211.051(b) authorizes the commissioner to *set underserved areas within that designated area*, if the commissioner determines that 'property owners' association insurance *is not reasonably available in the voluntary market to a substantial number of insurable risks*.'" (See Adoption Order, p. 2, emphasis added). ICT believes the key question that must be decided based on these petitions is whether coverage is unavailable and whether this is the case for a substantial number of insurable risks in the requested area within the previously designation area. If an underserved area is determined to exist, specific POAs within that area must demonstrate they qualify for coverage

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<sup>1</sup> For ease of reference, we will refer to these potentially FAIR Plan-eligible common areas as "POAs".

from the FAIR Plan, consistent with the FAIR Plan's underwriting guidelines and other requirements.

TDI is required to determine that the petitions are in substantial compliance with 28 TAC §5.9331 (Rule 5.9331). ICT has reviewed the five petitions and believes they are not in substantial compliance with the requirements in Rule 5.9331. The specific properties related to the petitions may also not meet the requirements for being an insured in the FAIR plan under Chapter 2211, Insurance Code, although as noted above, ICT does not believe this is the issue the petitions must demonstrate. ICT respectfully requests that you decline to grant the petitions at this time until better and further information can be shown as required by law.

The Petitioners in this matter are:

1. Bayfront Condominium Association 351-401 Lakeside Lane, Nassau Bay, Texas 77058
2. The Point at Egret Bay Condominium Association, 18809 Egret Bay Blvd. Houston, Texas 77058
3. Meridian Townhome Owners Association, 329 Lakeside Lane, Nassau Bay Texas 77058
4. Natchez Landing Townhome Owners Association, 3535 E Nasa Pkwy, Seabrook TX 77586
5. Lakeside Townhome Council of Co-Owners, 1900 Lakeside, Seabrook TX 77586

Two of the petitioners appear to be condominium associations and three are townhome associations. This is an important difference in the types of insurance available from both the admitted market and the FAIR plan and should be considered in evaluating the requests. Again, Chapter 2211 was amended by HB 998 that a POA is only the "common areas" of either a homeowners' association or a condominium association. We have assumed that homeowners' association refers to townhomes as well. The petitions do not adequately distinguish the declination of coverage for POA common areas as defined in Sec. 2211.006(6-a). This will be further discussed below.

ICT offers the following to demonstrate why the Petitioners have failed to substantially comply with Rule 5.9331 and applicable provisions in Chapter 2211.

1. Chapter 2211, unlike the provisions for TWIA in Chapter 2210, require a risk, including a POA, to demonstrate eligibility by showing "two declinations from insurers authorized to engage in the business of, and writing, property owners' association insurance in this state". See, Tex. Ins. Code §2211.1511(b). Insurance Code §2211.154 also contains similar language before a risk can be inspected for eligibility by requiring "as evidenced by ***two current declinations from insurers*** authorized to engage in the business of residential property insurance or ***property owners' association insurance***, as applicable, in this state and actually ***writing*** residential property insurance or ***property owners' association insurance in this state.***" While these provisions go to the eligibility of specific properties, the process for determining an underserved area also requires a petitioner to provide the "names of insurers that have declined to provide coverage in the proposed underserved area." 28 TAC §5.9931(c)(6)(A). The specific coverages excluded should also be described. All of

the petitioners, except for Meridian, mention Michael Ruiz with GIA as their insurance agent. None of the petitions have shown or demonstrated specific declinations. Instead, the petitions of Lakeside, Egret Bay, and Natchez Landing list the names of insurers that “have not provided quotes.” This is different than a written declination. The insurance companies listed in these applications are also not shown as having appointed either Mr. Ruiz or GIA as their agent as required by law. It is not clear that an application was made that was declined because no evidence is shown in any of the petitions. Meridian does not mention the name of any insurer not providing a quote or declining coverage. Bayfront only states it “does not recall the last time we could get a quote...” We believe the general statements in the petitions are inadequate to support a conclusion that insurance is not reasonably available in the voluntary market to a substantial number of insurable risks, and therefore fails to substantially comply with Rule 5.9331.

2. The cost of insurance is not a factor that can be used to determine an area is underserved. All of the petitioners mention the cost of their current insurance as a reason for their underserved classification.
3. The petitioners refer to their properties as either condominium or townhouse complexes. There is an important difference in these property types for insurance purposes. The POA of a townhouse or homeowners association typically only owns certain common areas such as an office or recreation area. The townhouse itself is individually owned, including the outer structure, inner structure and contents. The individual owner of a townhouse typically purchases their own insurance, similar to a homeowners’ policy. Common areas for condominium complex owned by the POA may include the outer structure such as outer walls and roof while the individual condominium owner only owns and is responsible for that portion of the unit on the inside including plaster walls, lighting, flooring, and contents. There is a separate policy issued to the condo owner that reflects that coverage. All of the petitions failed to discuss this important difference.
4. Petitioners are required to provide the names of insurers that have or are actively writing **property coverage** in the proposed underserved area. Petitioners have provided no information other than the agent’s assertion that certain companies have not provided quotes, and there is insufficient information provided on companies actively writing property coverage either in the proposed underserved area or writing coverage in this state. While the TDI rule requires a petitioner to provide information about coverage for other POA’s “if known”, the information is vital to TDI’s necessary determination of whether insurance is reasonably available in the voluntary market in a specific area within the area designated by Rule 5.9330. TDI may be able to review other information available through its market reports or statistical plans to determine writings in specific zip codes.
5. Petitioners are required to show the total number of property owners' associations within the proposed underserved area. In one Petition, it was stated there may be 20 POAs in the area, however, the names of only three other associations were provided: Yacht Club, Mariner Village, and Seagate. No evidence was provided of their coverage. A google map view of this area shows there may be more than 20 others

that have not been listed. It is unreasonable to assess the general availability of insurance to a substantial number of POAs in the proposed area based on incomplete information from (at best) less than half of the associations in the requested area.

6. Petitioners are in the 10-mile area designated in Rule 5.9330 under TDI's previous rulemaking. However, the question before TDI is what if any part of this designated area is in fact underserved, based on the statutory definition. The statements in the petitions do not provide a reasonable basis for concluding that insurance is not reasonably available in the voluntary market within the area proposed or how this subset of unavailable areas should be determined.
7. In addition to the declination requirements, under Tex. Ins. Code §2211.1511(b), there is a requirement that each applicant must show their property is insurable in accordance with reasonable underwriting standards. There is no evidence provided about the condition of each petitioner's common area property. Under Rule 5.9331, TDI is allowed to ask for additional information about the current condition of the property. This is a specific requirement for any risk in a designated area. TDI should require petitioners to include any photographs any photograph indicating the pertinent features of the building construction, maintenance, occupancy, or any physical deficiencies of the POA property or individual property. This would help assess whether these properties are reasonably representative of other POA property with a potentially underserved area.
8. Several of the Petitions discuss building values and limits in their surplus lines policies. The limits discussed appear to be far in excess of the limits available through the FAIR plan and these may not be insurable under the FAIR plan. As discussed earlier, FAIR could only provide coverage to a POA for common areas as defined by statute. The petitions are misleading or deficient as to the availability of coverage for the common areas. ICT requests that staff review Rule 5.9914 which provides an aggregate limit for a POA to be only \$3 million per structure ***including business personal property***. It is impossible to know from the petitions the value being insured as a common area or business property. Petitioners have not provided any discussion of business personal property. Egret Bay's petition discusses building values of just over \$9 million; Lakeside Townhomes' petition discusses building values of over \$8 million; Meridian Townhomes discuss building values over years from \$3.5 million in 2022 increasing to \$4.1 million in 2024; Natchez Landing mentions building values over \$11 million. Bayfront does not list values, common areas, or business property. None of the applications discuss if these values are only for the POA common areas eligible for FAIR Plan coverage.

It is also not clear why this matter has been posted as an "exempt rule". The provisions in Article 5.96 of the uncodified Insurance Code define what is exempt from rulemaking under the Administrative Procedure Act (APA). FAIR Plan and designating areas as underserved are not listed in Art. 5.96. ICT respectfully requests that any action on the petitions to set an underserved area within the designated area should be done through formal rulemaking. The underserved area would be an area of general applicability if it is determined that a substantial number of insurable POAs within that area cannot obtain coverage in the voluntary market. We have reviewed all prior exempt rule postings going back to 2002 and have found no example where TDI has designated an underserved area in FAIR plan by use of an exempt rule proceeding.

ICT respectfully submits if there is a new designated area based on these petitions, this should be done only through formal rulemaking in compliance with APA provisions in Chapter 2001, Govt. Code. This would afford greater transparency and opportunity for review by both member insurers of the FAIR Plan and other interested stakeholders. The current proceeding was released for comment on May 28, 2025, with a hearing and comment deadline only nine calendar days later.

While ICT is sympathetic to the increasing costs of insurance and factors driving those increases, many of its members are still actively engaged in writing property insurance business in Texas. We urge attention to detail when it comes to expanding coverage in the FAIR plan for commercial risks. The question of whether a new area is underserved within the designated area set by Rule 5.9330 must be determined solely by whether there are other admitted markets available to a substantial number of these risks. Markets may be available through other agents or direct writers. Rising premium costs, particularly premium costs in the surplus lines market, is not a factor that can be considered in this matter.

ICT respectfully requests these petitions be denied. We also urge that if any effort to set an underserved area within the existing designated areas proceeds, that this be done through notice of a formal rule.

Respectfully submitted,

*Jay Thompson*

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