

Independent Insurance Agents & Brokers of Louisiana
9818 Bluebonnet Boulevard
Baton Rouge, Louisiana 70810
www.IIABL.com
(225) 819-8007

TA 303

September 6, 2012

SUBJECT:

Louisiana's Calendar-Year Hurricane Deductible

BACKGROUND:

The magnitude of hurricane losses in recent years, starting with Hurricane Andrew in 1992, has caused insureds, insurers, and state governments in coastal states from Texas to Maine, to make concerted efforts to mitigate such losses in the future. Insureds have a greater awareness of the importance of the types of construction methods and materials they use in their homes. State governments have passed legislation which strengthened building codes, as well as added wind mitigation credits on insurance. Insurers have been hit hard by massive losses, followed by tighter reinsurance requirements, along with possible downgrading of the company's credit rating. The next domino to fall is the potential for an availability crisis in the property insurance marketplace.

One of the tools which can address these issues is the implementation of higher hurricane deductibles, expressed as either dollar amounts, or a percentage of the home's value. According to a May 2012 report from the Insurance Information Institute (III), eighteen coastal states have some form of hurricane deductibles in place in their property insurance markets. [See "Hurricane and Windstorm Deductibles" at the III web site:

http://www.iii.org/issues_updates/hurricane-and-windstorm-deductibles.html .] At the end of its 13-page report, the Insurance Information Institute concludes with the following observation:

In 1992, Hurricane Andrew caused \$15.5 billion insured losses, the most expensive storm ever for insurers, with claims costing nearly four times as much as the previous most costly storm, Hurricane Hugo in 1989. It soon became apparent through computer-based models of storms and

residential development patterns that homeowners insurers were far more vulnerable to huge weather-related losses than they had thought. Some of the largest homeowners insurers found it difficult to arrange for the reinsurance (insurance for insurance companies) coverage they needed to protect their bottom line because reinsurers were unwilling to assume so much risk. To get coverage from reinsurers, they had to agree to greatly reduce their potential maximum losses from severe wind and hailstorms by requiring their policyholders to bear a greater share of the cost. This was accomplished by switching over to percentage deductibles that not only increase the deductible amount across the board but force homeowners with expensive homes to take a higher financial burden than those with homes of lesser value.

MAIN POINTS:

As higher hurricane deductibles began to proliferate throughout the property markets in the coastal states, in 2008, the Louisiana Legislature passed SB 160 (Act 854), which addressed a provision in the current insurance code regarding increasing deductibles at renewal. Up until that time, a homeowners insurer was prohibited from increasing deductibles at renewal, as follows [emphasis added]:

22.635.3.C. *No insurer providing property, casualty, or liability insurance shall cancel or fail to renew a homeowner's policy of insurance or to increase the policy deductible that has been in effect and renewed for more than three years unless based on nonpayment of premium, fraud of the insured, a material change in the risk being insured, two or more claims within a period of three years, or if continuation of such policy endangers the solvency of the insurer.*

Act 854 added two additional provisions (subsections D. and E.) to the above statute, regarding deductibles for “named storms or hurricanes.” [In a separate Legislative action in 2008, statute 22.635.3 was redesignated as 22.1333.]

Below are excerpts from the two revisions to the statute:

22.1333.D. *Notwithstanding the provisions of Subsection C of this Section, an insurer may make a filing with the commissioner pursuant to R.S. 22:1464 for authorization to deviate from the provisions of Subsection C of this Section for the sole purpose of changing the policy deductible to a total deductible of not more than four percent of the value of the property being insured for named storms or hurricanes on a homeowner's policy of insurance that has been in effect*

for more than three years. Any insurer filing with the commissioner pursuant to this Subsection shall file with the commissioner a business plan setting forth the insurer's plan to write new business in the particular region or area of the state in which the new deductible is to apply. The commissioner's approval is to be based on the insurer's commitment to the writing of new business in the respective region or area of the state in which the new deductible is to apply.

22.1333.E. *No homeowner's policy of insurance shall contain any provision that would apply more than one deductible to a loss resulting from any single incident covered by the policy. Any such provision shall be null and void and unenforceable as contrary to public policy.*

Under 22.1333.D., insurers were given the flexibility to change the deductible for “named storms or hurricanes” on a homeowner policy at renewal. At the same time, insurers had to agree to “the writing of new business in the respective region or area of the state in which the new deductible is to apply.”

Under 22.1333.E., a prohibition was added which would restrict the application of more than one deductible to any single incident. While this was intended to provide some relief to insureds where more than one deductible might apply (hurricane damage, with subsequent tornado damage from the same weather system such as a hurricane, for example), many Louisiana residents faced losses from two separate hurricanes in the same year (Katrina and Rita in 2005, and Gustav and Ike in 2008). Many Florida residents had been through a similar situation in 2004, with Hurricanes Charley, Frances, Ivan and Jeanne.

In 2009, the Louisiana Legislature addressed the issue of multiple hurricanes hitting the state in the same season, which would mean that insureds would face multiple hurricane deductibles. HB 333 (Act 134), which was designated in statute as 22:1337, provides as follows:

22:1337. *Homeowners' insurance deductibles applied to named-storms, hurricanes, and wind and hail deductibles.*

A. For purposes of this Section, the following definitions shall apply:

(1) "Hurricane" means a storm system that has been declared a hurricane by the National Hurricane Center of the National Weather Service.

(2) "Named storm" means a storm system that has been declared a named storm by the National Hurricane Center of the National Weather Service.

(3) "Separate deductible" means a deductible that applies to damage incurred during a specified weather event and may be expressed as a percentage of the insured value of the property or as a specific dollar amount and includes hurricane, named-storm, and wind and hail deductibles.

B. For all homeowners' insurance policies or other policies insuring a one- or two-family owner occupied premises for fire and allied lines, issued or renewed by authorized insurers on or after January 1, 2010, any separate deductible that applies in place of any other deductible to loss or damage resulting from a named storm or hurricane shall be applied on an annual basis to all named-storm or hurricane losses that are subject to the separate deductible during the calendar year.

C. If an insured incurs named-storm or hurricane losses from more than one named storm or hurricane during a calendar year that are subject to the separate deductible referred to in Subsection B of this Section, the insurer may apply a deductible to the succeeding named storms or hurricanes that is equal to the remaining amount of the separate deductible, or the amount of the deductible that applies to all perils other than a named storm or hurricane, whichever is greater. Insurers may require policyholders to maintain receipts or other records of such losses in order to apply such losses to subsequent named-storm or hurricane claims.

Acts 2009, No. 134, §1, eff. June 25, 2009.

Also in 2009, the Louisiana Legislature passed HB 437 (Act 36) amending two sections of the existing insurance code (22:1319 and 22:1332), which mandated that insureds be provided a prominent notice regarding the application of a hurricane or named storm deductible, as follows:

22:1319. *Delivery of fire insurance contract providing coverage for damage to property; disclosure of coverage; coverage for damages due to flood*

B. No fire insurance policy which provides coverage for damage to property shall be delivered or issued for delivery in this state unless the insurer advises the insured in writing, prominently displayed on a form developed and promulgated by the commissioner of insurance and in bold typed print of not less than a fourteen-point font as an insert in the front of the policy, of the following disclosures:

(3) Whether a separate deductible is required for hurricane, wind, or named-storm damage, and, if so, one standardized example of how such separate deductible will be applied under the policy. Such example need not be customized for each policyholder.

22.1332. Delivery of homeowners' insurance; disclosures

B. No homeowners' insurance policy which provides coverage for damage to property shall be delivered or issued for delivery in this state with respect to any residential property unless the insurer advises the insured in writing, prominently displayed on a form developed and promulgated by the commissioner of insurance and in bold typed print of not less than a fourteen-point font as an insert in the front of the policy, of the following disclosures:

(6) Whether a separate deductible is required for hurricane, wind, or named-storm damage, and, if so, one standardized example of how such separate deductible will be applied under the policy. Such example need not be customized for each policyholder.

In February 2010, the Louisiana Insurance Commissioner's "Monthly Column" provided the industry, and the public, with an excellent and comprehensive discussion of Act 134 and Act 36, which passed in 2009, with an effective date of January 1, 2010. It appears below.

**Commissioner's Monthly Column,
Single Season Hurricane Deductible Law Effective
January 1, 2010**

February 2010

*The effective date of several new laws impacting insurance that passed in the 2009 Regular Legislative Session was January 1, 2010. One such law is **Act 134 (LSA-R.S. 22:1337)**, the single season hurricane deductible law. The need to revise the law regarding named-storm/hurricane/wind and hail deductibles was evident after Hurricanes Rita and Katrina in 2005 and Hurricanes Gustav and Ike in 2008 struck Louisiana back to back. I supported this legislation, which lessens the impact a policyholder must bear when multiple storms cause damage to an insured property during a single storm season. The legislation gives policyholders the ability to better plan and manages the cost of recovery by applying only one named storm/hurricane/wind and hail deductible per hurricane season.*

The single season deductible affects policies issued on or after January 1, 2010. When a policy includes a separate named-storm/hurricane/wind and hail deductible, Act 134 provides that only one named-storm/hurricane/wind and hail deductible be applied to homeowner property damage claims for all named-storm and hurricane events occurring in a single calendar year. Once the separate named-storm/hurricane/wind and hail deductible has been depleted, the otherwise applicable all peril or wind and hail deductible will continue to be applied for all non-named storm and non-hurricane events. Act 134 affects all homeowner policies or other policies insuring a one-or-two family owner occupied premises for the wind peril. Other policies impacted by this legislation would be owner occupied one or two family dwelling fire policies, mobile homeowner policies and farm owner policies.

This is how it works. Act 134 requires that the separate named-storm/hurricane/wind and hail deductible be applied only once during a calendar year. When there is a named-storm or hurricane event occurring after the full amount of the separate named storm/hurricane/wind and hail deductible is applied, the deductible to be applied shall be the all peril deductible otherwise applicable to a policy loss.

For the first named-storm or hurricane event occurring in a calendar year, the separate named-storm/hurricane/wind and hail deductible will be applied. If a second named storm or hurricane event occurs in a calendar year, the unused

portion of the separate named-storm/hurricane/wind and hail deductible (unused in the first event) will be applied to the loss of the second event. Third and subsequent named-storm or hurricane events will continue to use up the unused portion of the separate named storm/hurricane/wind and hail deductible. If, at any time and only for a named-storm or hurricane event, the unused portion of the separate named-storm/hurricane/wind and hail deductible is less than the otherwise applicable all peril deductible, then the all peril deductible will be applied (i.e., the larger of the unused portion of the separate named storm/hurricane/wind and hail deductible and the all peril deductible will be applied).

The single season deductible law applies to hurricanes and named storms as defined by the National Hurricane Center of the National Weather Service. The single season deductible law is in effect only when there is a separate named-storm/hurricane/wind and hail events policy deductible, often expressed as a percentage of the insured value of the dwelling insured under the policy, or a separate dollar amount that is greater than the all peril deductible otherwise applicable to the policy. Please note that if a policy has a separate wind and hail deductible this legislation is applicable for a hurricane or named-storm event only.

As a producer, there are three particularly important items that merit your attention. First, this legislation does not apply to non-admitted (surplus lines) carriers. Second, and perhaps more important for the advice you may need to share with a client, if an insured changes carriers after the first named-storm/hurricane event, that insured would be subject to two separate single seasonal named-storm/hurricane/wind and hail deductibles – one separate named-storm/hurricane/wind and hail deductible with the old policy and one separate named-storm/hurricane/wind and hail deductible with the new policy. Third, when the separate named-storm/hurricane/wind and hail deductible is exhausted, subsequent named-storm/hurricane losses are subject to the all peril deductible of the applicable policy.

A company may request that a policyholder report and/or send in receipts for each loss at the time the loss occurs, even if the aggregate is below the separate named storm/hurricane/wind and hail deductible, or have the policyholder report and/or maintain receipts and report all losses and receipts only when the aggregate loss exceeds the separate named-storm/hurricane/wind and hail deductible. Each

insurance company will have procedures in place regarding this.

Companies have begun making the required form filings with the Department of Insurance for this mandated coverage change. I expect the cost of Act 134 to be an average increase of about two percent per homeowner policy, overall, which is worth the peace of mind and financial savings provided during the more active hurricane seasons in Louisiana.

*Another law regarding separate named-storm/hurricane/wind and hail deductibles was effective January 1, 2010. **Act 36** requires a disclosure of whether a separate deductible is required for named-storm/hurricane/wind and hail and if so, one standardized example of how such a separate deductible will be applied under the policy will be described in an insert in the front of the policy package.*

These two legislative changes, which were effective January 1, 2010, will prove to be a valuable protection for insured homeowners as Louisiana continues to face uncertain hurricane seasons in the years to come.

**NECESSARY
ACTION:**

Circulate this Technical Advisory to all appropriate agency personnel.