

## NY Pols Eye Fixes As Sandy Flood Leads To Claim Denials

By **Pete Brush**

*Law360, New York (February 26, 2013, 8:46 PM ET)* -- Private insurers that blame flood waters to deny coverage to New York homeowners and business owners wiped out by Superstorm Sandy came under scrutiny Tuesday as state lawmakers heard from frustrated policyholders, but experts say legislative efforts to block such denials could be tricky.

Comments made by top elected officials, including New York State Assembly Speaker Sheldon Silver, D-Manhattan, suggested a legislative or regulatory effort could get under way to limit so-called anti-concurrent-cause language, which limits coverage when damage is caused by both covered and uncovered causes.

At a downtown Manhattan hearing, lawmakers took testimony from business owners who thought they had ironclad insurance but had their claims denied because adjusters determined that Sandy's flooding was to blame.

The business owners who testified were covered for wind, damage from water or sewer backup and business interruption, but they nevertheless saw their claims turned down and their premiums go for naught.

"We had, to the best of our knowledge, the best coverage that we could have had," restaurant owner Fernando Dallorso told the panel, called by Assembly's Standing Committee on Insurance, after his claim was denied.

Many business owners hit by Sandy did not have pricey flood coverage because they didn't think they would ever need it and were never told by landlords, insurance brokers or other industry voices that they might, people at the hearing said.

While insurance fights after big storms are not surprising, Silver and his colleague Kevin Cahill, a Democrat from Kingston who chairs the insurance committee, objected to the plight of Dallorso and other business owners who didn't have flood coverage.

"Many people are just paying premiums and not benefiting from the policies," Silver said.

Silver and Cahill both pressed another top state official, New York State Department of Financial Services Chairman Benjamin Lawsky, about whether regulatory steps to rein in anti-concurrent-causation clauses could be taken.

“We are looking at it very seriously,” said Lawsby, who noted that the issue has been heavily litigated, especially in Louisiana after Hurricane Katrina struck in 2005, and that insurers have often won those fights.

“If they get litigated, it's unclear how it will shake out in New York,” Lawsby said of the clauses, which are ubiquitous in insurance policies across the U.S.

Despite Lawsby's assertion that insurers were doing a relatively good job on the whole, having paid out \$3.6 billion in claims since the storm struck Oct. 29, Silver and Cahill implied that a legislative effort to curb anti-concurrent-cause denials could be in the offing.

The back-and-forth over whether such policy language could be targeted in Albany drew a quick response from New York Insurance Association President Ellen Melchionni, whose group represents Empire State property and casualty insurers.

"The New York Insurance Association cautions against sweeping changes being made," Melchionni said, noting that insurers rely on policy language that has been approved by New York regulators. “Careful consideration is necessary regarding the role of these clauses.”

At least two other states, California and Washington, have taken steps to limit anti-concurrent-causation clauses, but most states have continued to allow them, according to professor Peter Kochenburger, executive director of the University of Connecticut's Insurance Law Center.

Insurers don't add such clauses in a deliberate bid to avoid payment, Kochenburger said. But they are a problem not only because average policyholders often don't understand them, but also because policyholders don't typically have the resources to litigate denials based in such legalese.

"The mere term itself always gets me," Kochenburger said. "The term 'anti-concurrent cause' is gobbledygook."

Another insurance expert, however, said the clauses are the products of decades of honing in the industry and represent insurers' best efforts to shield themselves from the runaway risks caused by events such as floods, wars and earthquakes, while still providing reasonably priced coverage.

“This is something that has come into existence after years and years of consideration,” Robins Kaplan Miller & Ciresi LLP insurance group chair William N. Erickson said.

Legislative efforts attempting to take dead aim at anti-concurrent-cause language pose the risk of unintended consequence to the industry, including the potential see premiums rise to unaffordable levels, Erickson said.

“Anytime lawmakers draw up a statute, you have to be careful and think about what the implications are,” he said “It's a mature world where we've got a lot of laws on the books. One has to ask how new laws would impact the industry.”

--Editing by Elizabeth Bowen and Chris Yates.