



TEXANS FOR LAWSUIT REFORM

HB 1774 by Rep. Greg Bonnen: A Consumer-Friendly Solution to Rampant Lawsuit Abuse Perpetrated by Storm-Chasing Lawyers

Lawyer-driven, hail-related litigation is the worst lawsuit abuse in Texas today. If it isn't stopped, Texas consumers will see increased premiums or deductibles, or reduced or lost coverage.

- An insurance company still has an obligation to pay a claim quickly and fully.
- A policyholder still can sue her insurance company for failing to pay her claim on time or for acting badly.
- The policyholder will *always* recover every penny owed to her by the insurance company, including up to three times the amount of her actual damages if the insurance company knowingly violated the Unfair Claim-Settlement Practices Act.
- Texas will still have the most consumer-friendly insurance laws of any large state.
- Storm-chasing lawyers will no longer be able to exploit the law for their own profit.

How do we know this is lawsuit abuse? The lawsuit-to-claim rate has increased dramatically—from a historic average of about one percent to over 25 percent in some places. Over 30,000 of these lawsuits have been filed since mid-2012. There were over 27 times more of this type of lawsuit filed in 2015 than in 2007.

Abuse: Plaintiff lawyers ignore the statutorily required 60-day pre-suit notice, denying the insurance company the ability to resolve a dispute before a lawsuit is filed, which also denies the policyholder the opportunity of an early resolution of the dispute. **Solution:** *Require* that the plaintiff lawyers give notice before they can pursue a lawsuit.

Abuse: Plaintiff lawyers name insurance company employees and contractors as co-defendants for strategic reasons, imposing hardships when those persons have done nothing wrong. **Solution:** Allow the insurance company to irrevocably agree to pay for any wrongdoing done by the company's agent or employee, thus allowing the case against the individual to be dismissed while guaranteeing that the policyholder is made whole.

Abuse: Plaintiff lawyers vastly inflate claims in a game designed to establish the statutory right to recover attorney's fees. **Solution:** Limit attorney's fees if the pre-suit demand is excessive, and prohibit the recovery of attorney's fees if the lawyer demands more than five times the amount actually owed. But whether it is a small or large claim, the attorney may recover *all* of his attorney's fees if he made a reasonable pre-suit demand on his client's behalf.

Abuse: Plaintiff lawyers often wait as long as two years to file lawsuits in order to collect on an 18 percent annual penalty interest. **Solution:** Change the penalty interest to a floating rate based on interest rate markets, floating between 8 and 18 percent.

Abuse: Plaintiff lawyers often file under multiple causes of action for the purpose of complicating litigation and increasing discovery. **Solution:** Plaintiff lawyers must choose to file under either the Deceptive Trade Practices Act or the Unfair Claims-Settlement Act but not both, still leaving the plaintiff with many causes of actions to pursue against the insurer.

Abuse: Plaintiff lawyers are soliciting clients through illegal conduct. **Solution:** Ban storm-chasing lawyers from recovering attorney's fees if they have engaged in illegal conduct, known as barratry, case running or ambulance chasing.



TEXANS FOR LAWSUIT REFORM

Recently, a group calling itself the “Texas Association of Consumer Lawyers” distributed materials to legislators asserting that there is no lawsuit abuse in Texas concerning property-damage claims related to weather events. Please consider the source of that communication—the so-called “Association of Consumer Lawyers” is largely funded by the storm-chasing lawyers who are flooding our courts with meritless claims for their own gain.

We have enclosed charts showing the explosion in weather-related lawsuits in Texas in recent years—over 34,000 lawsuits filed since 2012, which is astronomical compared to the average of 745 lawsuits filed annually between 2006 and 2011. This can be explained only by lawyer-driven activity.

We ask you to consider the actions and words of distinguished Texas federal judges concerning storm-chasing lawyers:

Judge Micaela Alvarez’s order to the Mostyn Law Firm, in which the judge states that the law firm “*has unleashed a hailstorm of its own upon the Court in the form of baseless claims.*” Several excerpts from the court’s order are shown on an enclosure herein. (Mr. Mostyn is the largest contributor to the “Texas Association of Consumer Lawyers.”)

Judge Alia Moses ordered the Voss Law Firm to “show cause” why the firm “should not be held in contempt, fined, imprisoned, and/or reported to the State Bar of Texas” for unethical and abusive conduct described in the court order, causing the judge to conclude: “*Taken together, it looks to the Court like the Voss Law Firm was keeping its clients in the dark for its own benefit. And by unduly delaying the litigation process, the Voss Law Firm has forced this Court to needlessly maintain jurisdiction over this case....*” (We can provide you Judge Moses’ 19-page order upon request.)

For more than two decades, TLR has worked to protect Texas’ legal system from the rampant abuse that was prevalent in our state prior to 1995. We have a proven track record of proposing principled, common-sense reforms that deliver on their promises – stopping lawsuit abuse while maintaining an impartial civil justice system that helps the Texas economy prosper.

This legislative session, we again look forward to working with you to eliminate lawsuit abuse and protect the affordability and availability of property insurance for all Texans, especially working families who struggle to make their monthly home mortgage payments that include principal, interest, taxes and homeowners insurance.

After Enactment of HB 1774, Texas Policyholders Will Maintain a Wide Array of Remedies Against Insurance Carriers

HB 1774 implements common-sense reforms to stop storm-chasing lawyers from exploiting the Insurance Code, while preserving the right of Texas policyholders to sue their insurance companies when they act slowly, unfairly, negligently or in bad faith. After **HB 1774** becomes law, policyholders will still have a strong bargaining position against their insurers, as well as multiple causes of action and extraordinary remedies against insurers who do not pay claims fully and timely.

Prompt Payment of Claims Act (Tex. Ins. Code Ch. 542, Subch. B)

Under current law, if a claim is paid late, the policyholder is entitled to recover an 18 percent penalty interest. Under **HB 1774**, the penalty interest will change from a fixed 18 percent to a floating rate based on the interest rate market. This change conforms the Insurance Code to other areas of Texas law that tie penalty rates to the interest rate market.

Under current law and **HB 1774**, policy holders are entitled to pre-judgement interest on amounts awarded at trial.

Under current law, insurance companies must pay the plaintiff's attorney's fees incurred in pursuing a claim that was paid late or underpaid. Under **HB 1774**, the insurance company still must pay reasonable and necessary attorney's fees, but those fees are limited if the plaintiff's attorney made an excessive pre-suit demand, and disallowed altogether if the attorney demanded more than five times the amount owed under the policy.

Current law imposes strict liability against an insurance company – the policyholder does not need to show bad faith or intentionally wrongful conduct to recover penalty interest and attorney's fees. **HB 1774** maintains that strict liability against insurance carriers.

Unfair Claim-Settlement Practices Act (Tex. Ins. Code 541, Subch. B, D)

Under current law, if the insurer deals with a policyholder in an unfair or deceptive manner in the claim-settlement process, the policyholder may recover actual damages and reasonable and necessary attorney's fees. Under **HB 1774**, the policyholder may still recover actual damages and attorney's fees, but the recovery of the attorney's fee is limited if the attorney

made an excessive pre-suit demand, and disallowed altogether if the attorney demanded more than five times the amount owed under the policy.

Under both current law and **HB 1774**, a policyholder may recover up to three times actual damages if the insurer knowingly committed a violation of the Act.

Deceptive Trade Practices Act (DTPA) (Tex. Bus. & Com. Code Ch. 17, Subch. E)

Under current law, if a carrier acted in a false, misleading, or deceptive manner, the policyholder may recover economic damages and reasonable and necessary attorney's fees.

The same is true under **HB 1774**, except the attorney's fee is limited if the attorney made an excessive pre-suit demand, and disallowed altogether if the attorney demanded more than five times the amount owed under the policy.

Under both current law and **HB 1774**, if the carrier *knowingly* committed a violation of the DTPA, mental anguish damages and up to three times economic damages may be recovered. If the carrier *intentionally* committed a violation of the DTPA, the policyholder may recover both economic damages and mental anguish damages, plus up to three times the total amount of economic damages and mental anguish damages awarded by the jury.

HB 1774 provides that a policyholder may not sue under both the DTPA and the Unfair Claim-Settlement Practices Act. The DTPA covers mostly marketing violations and has little, if anything, to do with claim-settlement activity.

Other Policyholder Causes of Action

Under both the current law and **HB 1774**, a policyholder may sue her insurance carrier for breach of contract. The only difference is that under **HB 1774**, any recovery of attorney's fees will be limited if the attorney made an excessive pre-suit demand, and disallowed altogether if the attorney demanded more than five times the amount owed under the policy.

Under **HB 1774**, a policyholder may also continue to sue her insurance carrier for breach of the common-law duty of good faith and fair dealing, for negligence and for fraud, if warranted by the facts. ■



U.S. District Judge Calls It Like It Is

By Lisa Bowlin Hobbs, *TLR Outside Legal Counsel*

“The Court is not to be treated like flypaper—hoping that something sticks.”

So wrote U.S. District Judge Micaela Alvarez, who took the unusual step in December of admonishing the Mostyn Law Firm for its repeated, unsupported, cookie-cutter claims in hail-related lawsuits.

Judge Alvarez had summoned Steve Mostyn to her court in March, asking him to explain why these cases merited the court’s time and resources and why he shouldn’t be sanctioned for his actions. In the months between that hearing and this order, more than a dozen Mostyn cases against insurers were thrown out on summary judgment.

While Judge Alvarez has yet to sanction the Mostyn Law Firm, she has blasted the firm—publicly and on the record—for what can only be seen as a scheme to use mass-tort tactics to exploit and profit from the statutory incentives that are fairly unique to Texas law.

For the past three years, TLR has informed the Legislature and the public about the blatant and widespread abuse of the courts by certain lawyers after hailstorms. Mostyn—who essentially bankrupted the Texas Windstorm Insurance Association pursuing this same mass-litigation model following Hurricane Ike—has taken his show on the road, using hail events throughout Texas to generate self-serving lawsuits.

But he is far from the only unethical attorney chasing storms and taking advantage of Texas homeowners. A new crop of copycat trial lawyers has piggybacked on this cottage industry, looking to cash in on the lucrative combination of lawyer’s fees, penalty interest and no-fault liability that drives this litigation.

So Judge Alvarez’s “Judicial Notice to the Mostyn Law Firm” serves multiple purposes. In it, the judge lays bare the unprofessional, meritless approach that Mostyn takes in pursuing hail-related lawsuits. But she also delivers a warning to other unscrupulous Texas attorneys who have followed in Mostyn’s litigious footsteps.

Unfortunately, only a few of the thousands of abusive hail cases end up before judges of Judge Alvarez’s courage. Nevertheless, all lovers of a fair and impartial judiciary can take heart in the judge’s exposure of these abuses:

“The Court has observed an unacceptable and systematic practice by Plaintiff’s counsel—the Mostyn Law Firm—of filing numerous and unfounded claims.”

“It troubles the Court to see instances in which the insured and insurer appeared to resolve all disputes under the contract, and then years later suit is filed for no apparent reason—putting aside the attorney knocking on the insured’s door.”

“[T]he Mostyn Law Firm finds it worth everyone’s time and energy to lop upon their breach claim numerous extra-contractual theories without any apparent justification.”

“[T]he Mostyn Law Firm consistently fails to allege any facts supporting extra-contractual injuries. Instead, they are content to squander valuable time fruitlessly answering decisive motions for summary judgment against them.”

“[T]he Mostyn Law Firm’s practice of systematically pleading and defending extra-contractual claims based solely on payment disputes is both wasteful and futile.”

“[B]eyond merely copying-and-pasting these claims from their templates and dropping them into case filings, the Mostyn Law Firm did not bother to specifically bring up, argue, or support these claims in any fashion.”

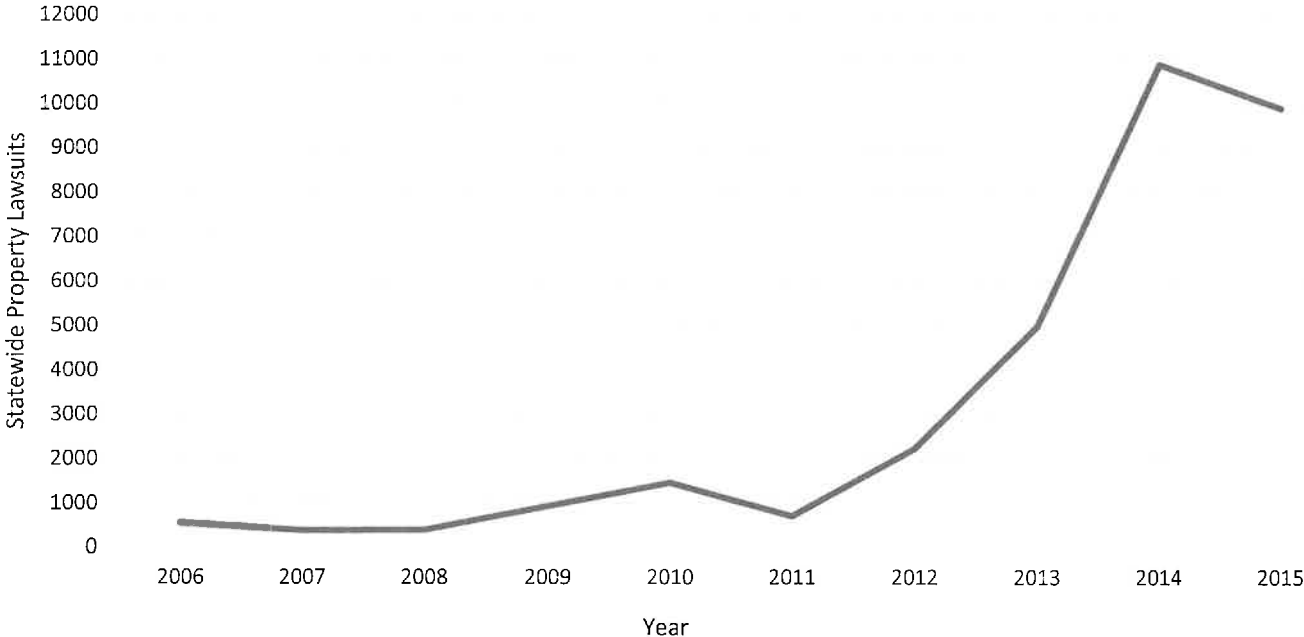
“It comes as no surprise that the Mostyn Law Firm’s extra-contractual claims arise not only unjustifiably, but also uniformly—they are undoubtedly part of a template the Mostyn Law Firm uses in hailstorm petitions.”

“In a bout of cosmic irony, the Mostyn Law Firm has unleashed a hailstorm of its own upon the Court in the form of baseless claims. The Court is not pleased.”

Decades ago, at the urging of plaintiff’s lawyers who then controlled Texas politics, the Texas Legislature wrote into the Insurance Code perverse incentives for the filing of needless lawsuits to reap higher damage awards and attorney’s fees. If the Legislature does not eliminate those incentives, then this Mostyn-inspired group of bad actors will continue to feast upon every damaging weather event in Texas. And all Texans will pay the price—not only in higher insurance deductibles and premiums and reduced insurance coverage, but in a degradation of our civil justice system and the erosion of popular trust in it that all abusive litigation necessarily causes. ■

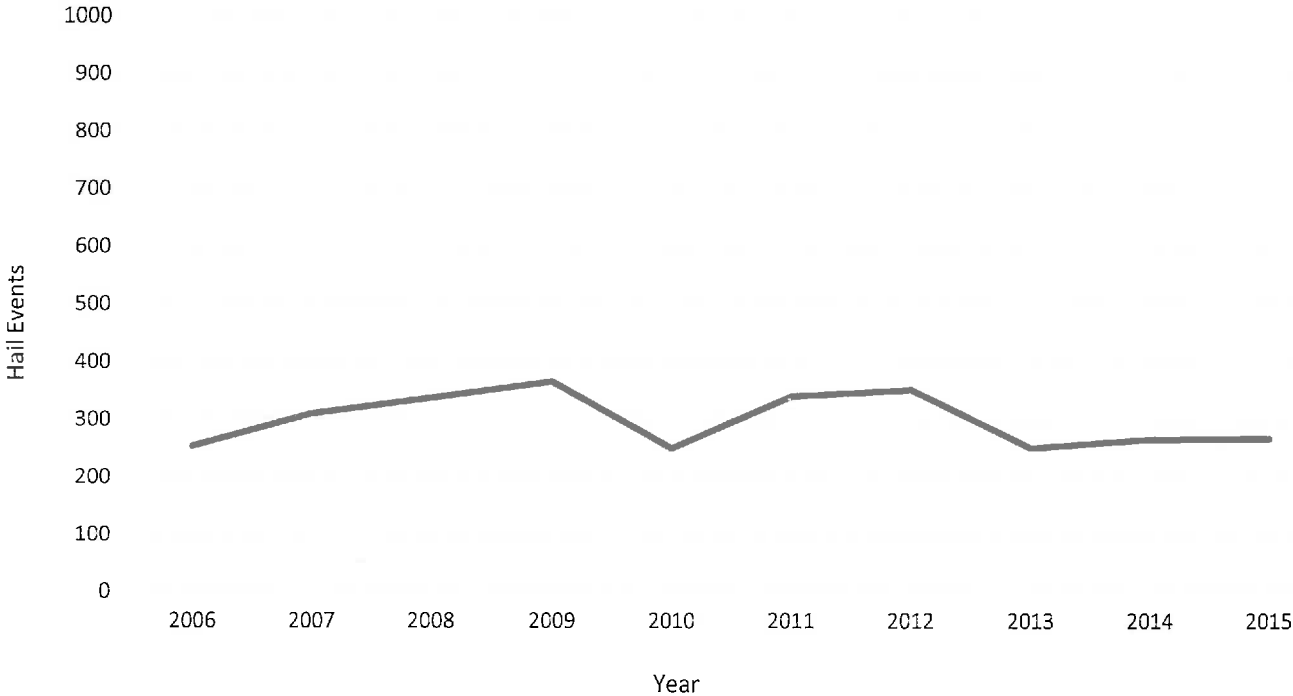
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Texas YOY Property Lawsuits Growth 2006-2015



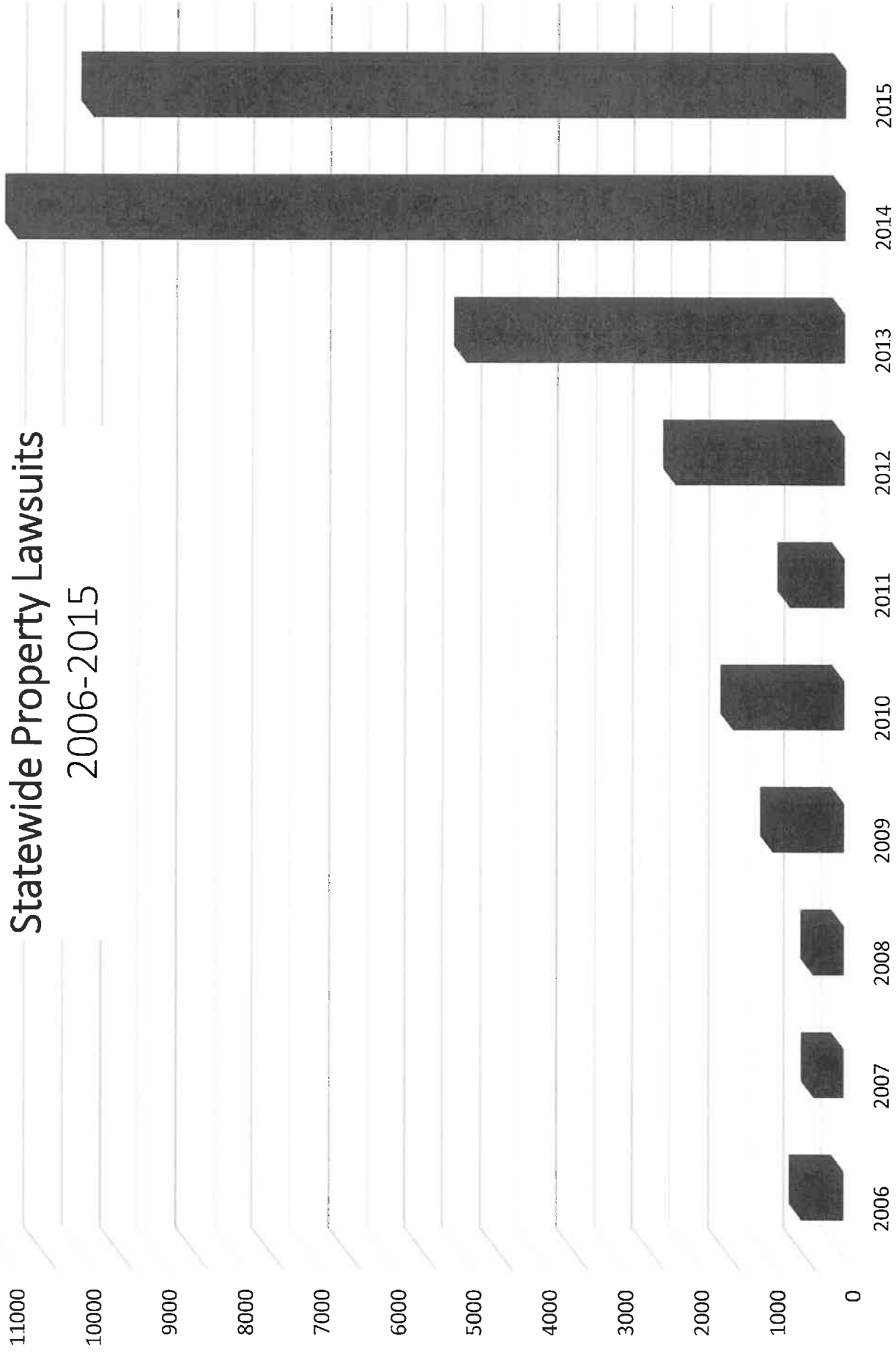
Source: Courthouse News

Texas Hail Events 2006-2015

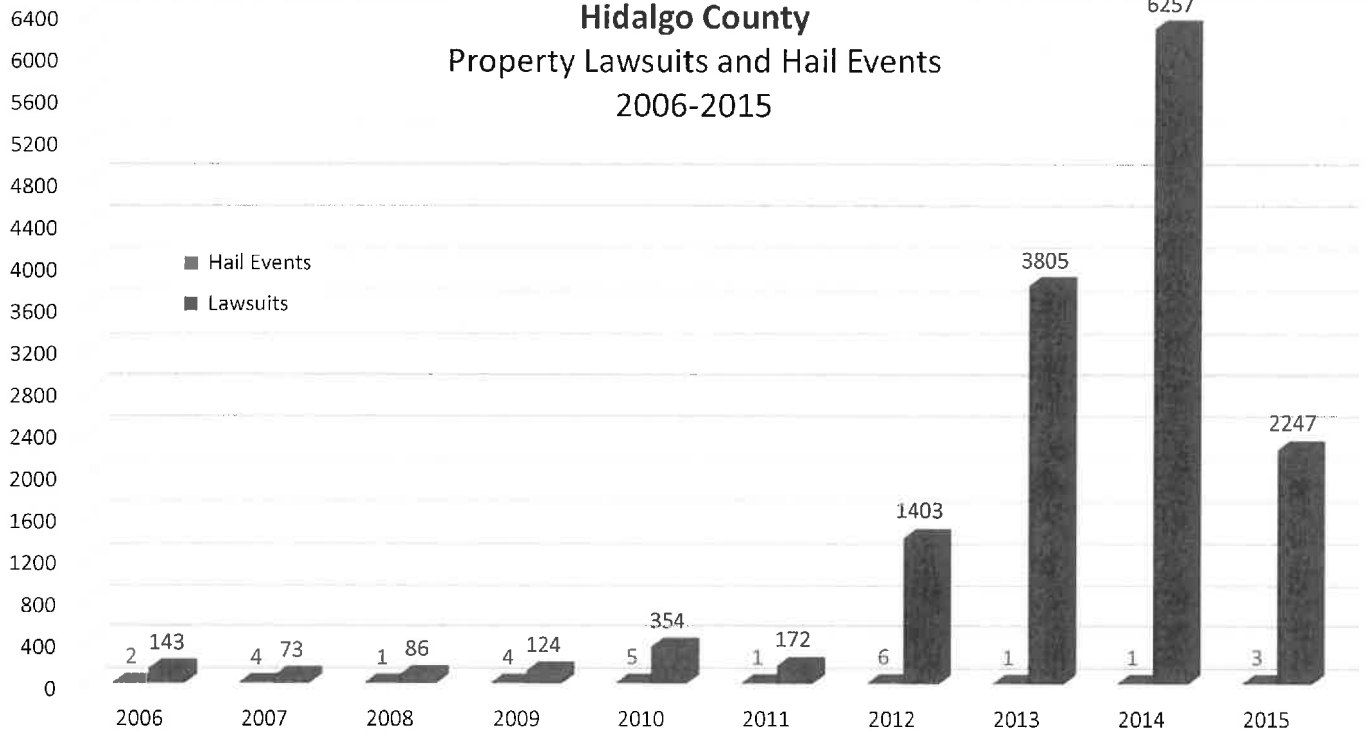


Source: AnythingWeather

Statewide Property Lawsuits 2006-2015

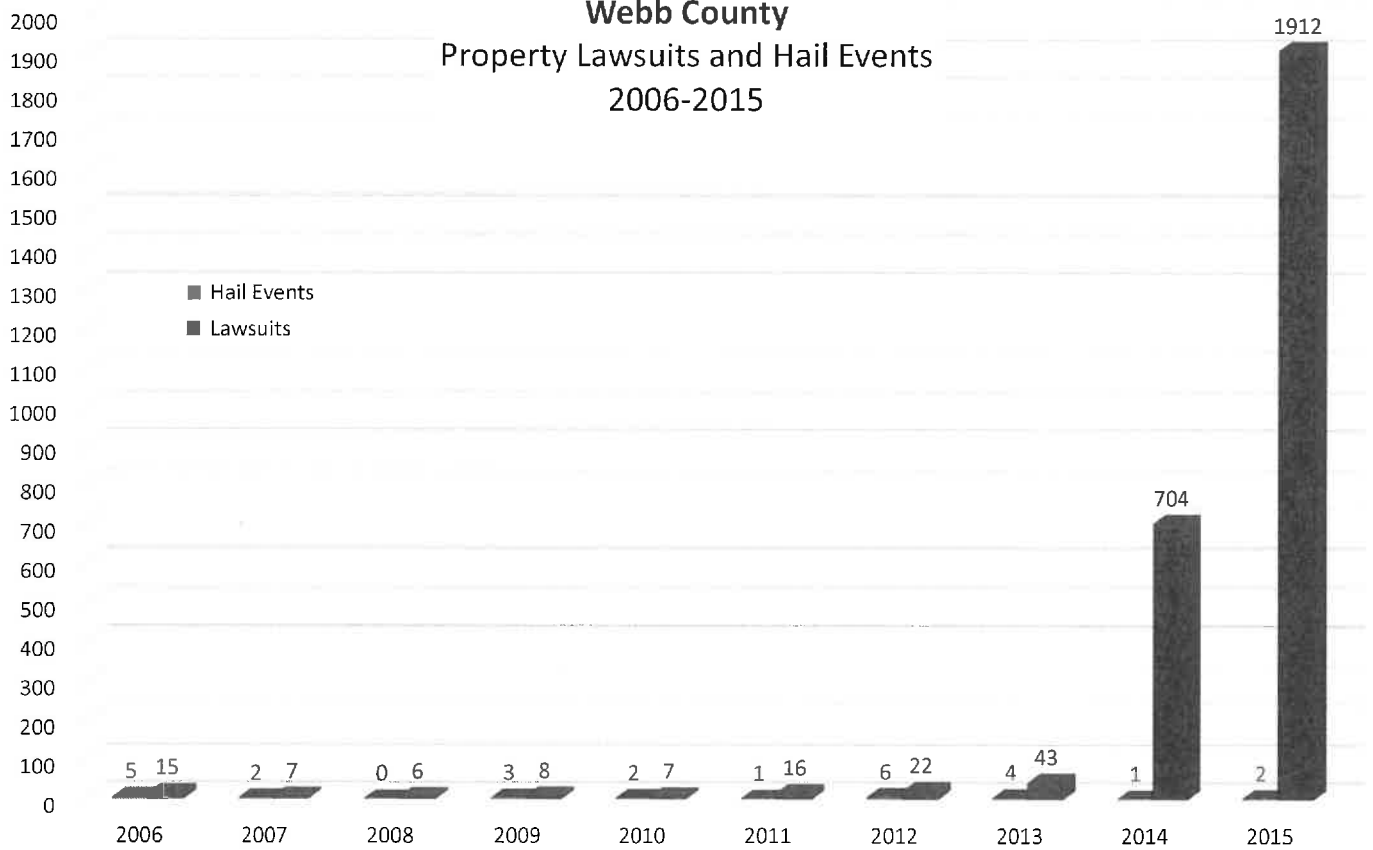


Hidalgo County Property Lawsuits and Hail Events 2006-2015



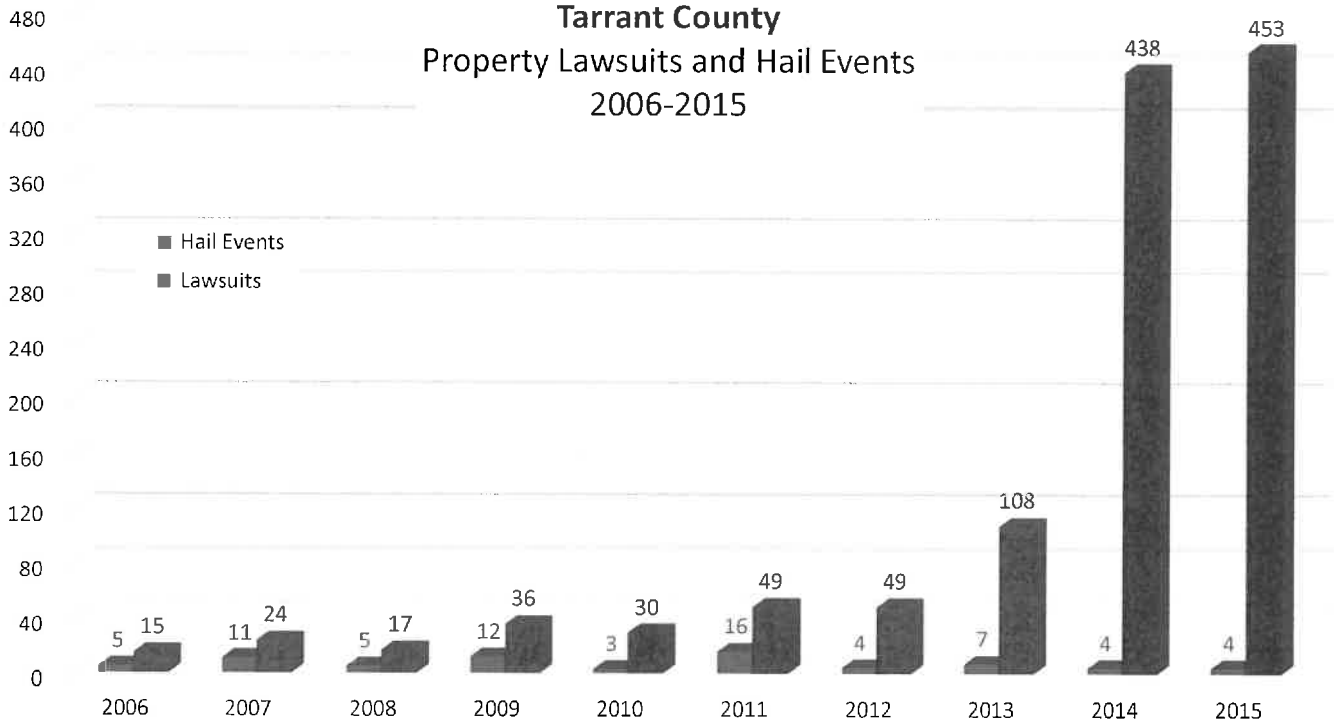
Source: Courthouse News

Webb County Property Lawsuits and Hail Events 2006-2015



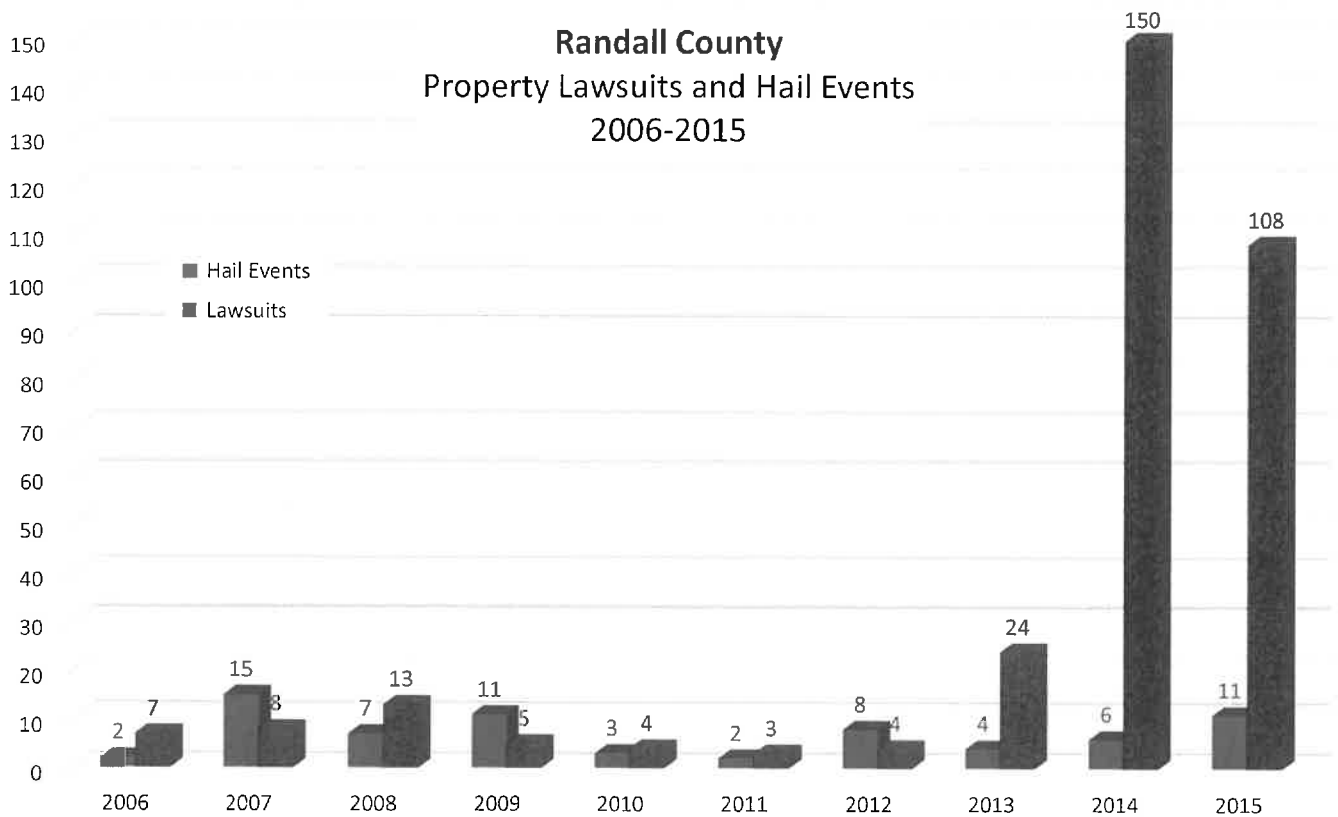
Source: Courthouse News

Tarrant County Property Lawsuits and Hail Events 2006-2015

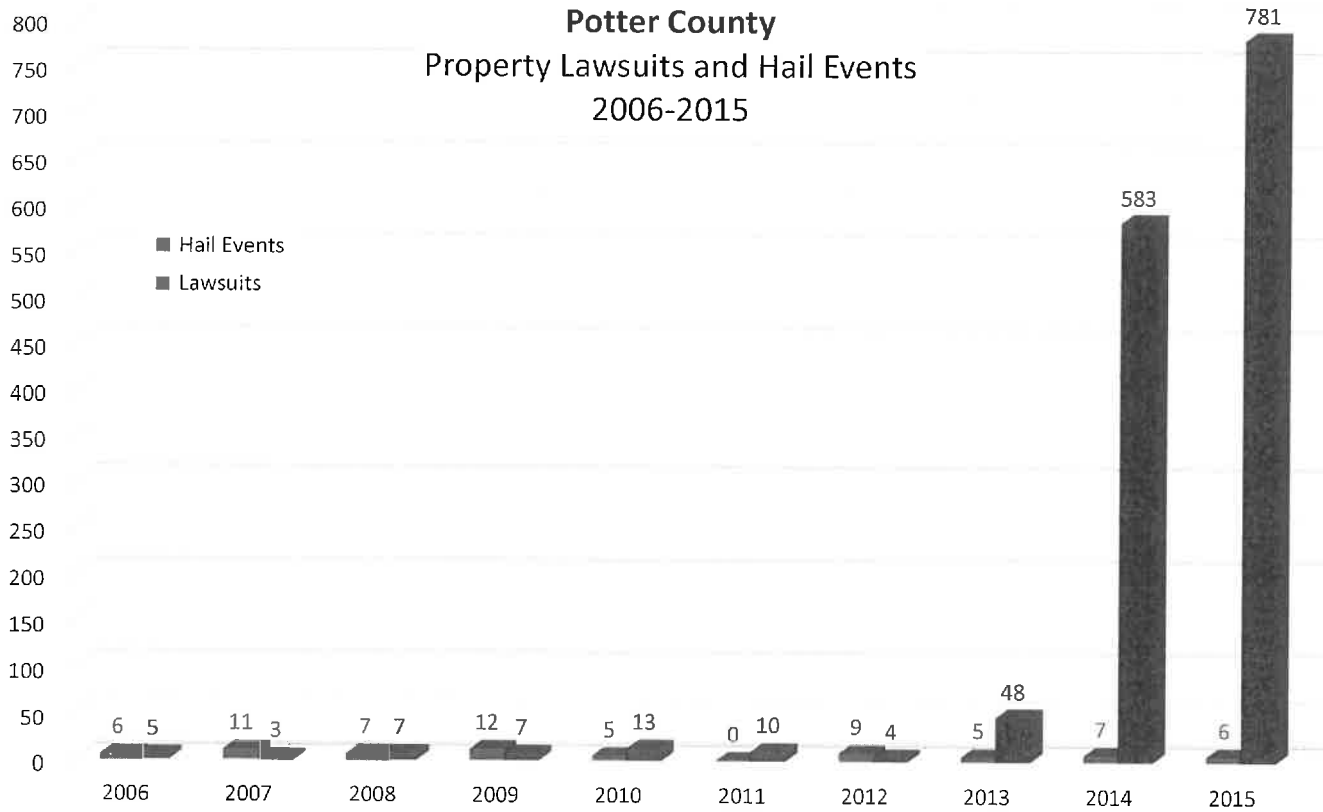


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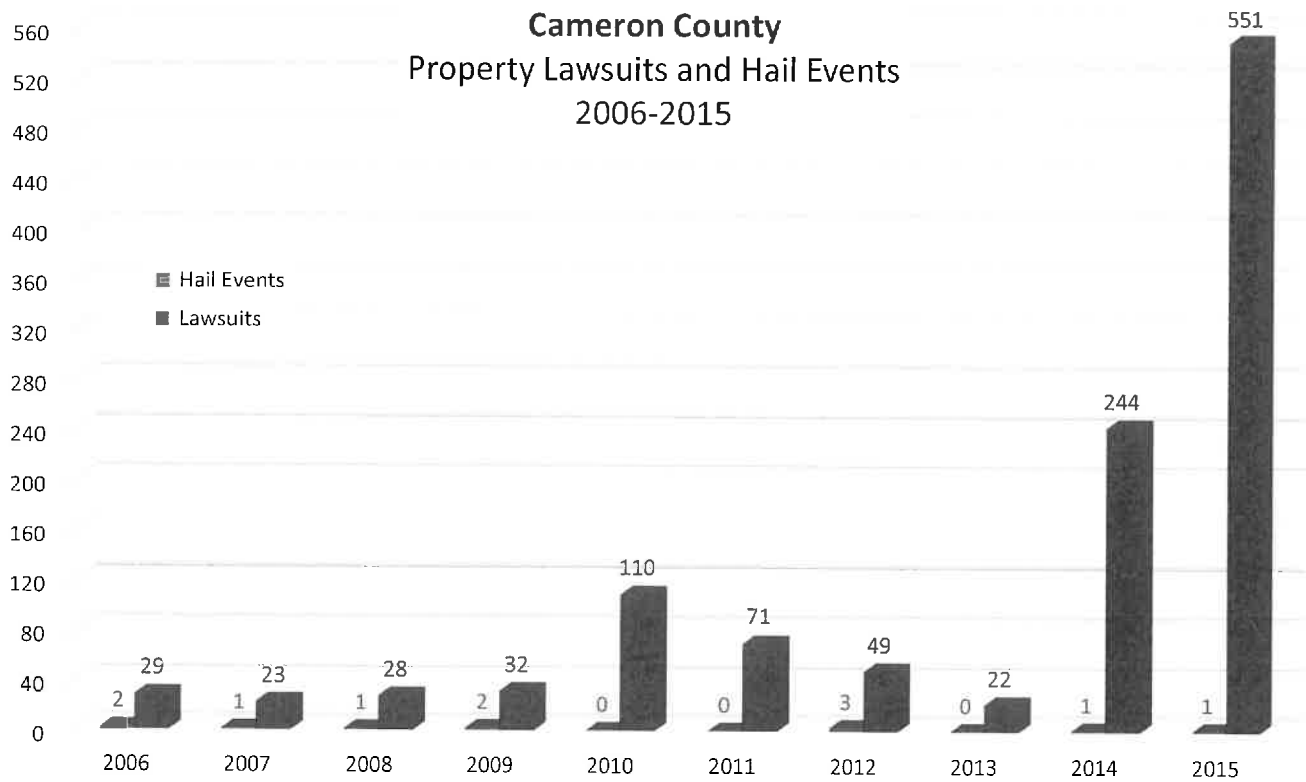
Randall County Property Lawsuits and Hail Events 2006-2015



Source: Courthouse News



Source: Courthouse News



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