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Navigating Insurance Claims for Business Interruption after Hurricane Irma: Key Considerations to Avoid Leaving Money on the Table

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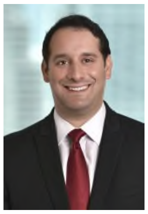

For business owners in South Florida, the end of Hurricane Irma may only be the beginning of their problems. This is especially true in the hospitality industry. In the storm's aftermath, hotels and other tourist attractions were rightfully focused on what they know best—getting their businesses up and running. Making a claim under business interruption insurance is far less familiar. It may even seem overwhelming when faced with the slew of questions that must be answered: When did the interruption technically begin under the policy? What time period is covered? What losses are we entitled to claim?

Things only become more complicated when insurers refuse to honor a claim and raise a host of reasons why the insured is owed less or has no coverage at all. This is a frequent bargaining tactic used by carriers that leaves policyholders asking the same bottom-line question: How do I know what's fair so I'm not leaving money on the table? The answer is typically best suited for experienced insurance coverage attorneys who are capable of deciphering the policy and are familiar with the insurers' playbook. This article identifies just some of the issues in Irma's wake that are crucial to submitting and negotiating business interruption claims.

1. When Did the Business Interruption Begin?

Business interruption coverage focuses on reimbursing policyholders for the loss of business income due to the necessary suspension of operations. Accordingly, the critical first step is identifying when the business interruption actually began. One might instinctively assume that this coincides with Irma making landfall. This is not necessarily the case. A storm with Irma's size and trajectory disrupted business long before the first wind gust reached shore. As Floridians are well aware, large portions of the state were under mandatory evacuation orders. For Miami-Dade County in particular, it was the largest evacuation in history. Some policies specifically account for this situation through civil authority coverage and effectively broaden the available recovery. Determining precisely how the relevant policy language interacts with the "period of restoration"—the time necessary to rebuild, repair or replace damaged property—can make a substantial difference in the appropriate amount of the claim.

2. What is the Covered Time Period for Lost Business Income Due to the Storm?

A second key element to any claim is the length of time that lost income is covered. Some policies, for example, are obligated to pay until business returns to normal. But as business owners are keenly aware, "normal" does not simply mean there's an "Open" sign in the front window. Businesses lost electricity throughout the state. Debris, fallen trees and flooding inhibited access to businesses for weeks.

Government offices remained closed. Suppliers may have had limited ability to operate. All of these factors could have reduced a business's bottom line for months after the storm. Insurers inevitably seek to save money by downplaying or ignoring these consequences to shorten the covered period of time. Where policies address these situations, businesses must make sure they're receiving everything they bargained for when they paid a premium for insurance.

3. How Much? Calculating Your Business Income Loss.

Once there is clarity on *what* the policy covers, the most important question is *how much*. While policies frequently detail how things like lost income should be calculated and quantified, there are still areas of uncertainty that insurers attempt to exploit. For example, new businesses or those at new locations may lack a long accounting history to establish revenues from prior years. Businesses have fixed and variable costs that may change as a result of a storm. A business might even generate some income notwithstanding a storm and its aftermath. Insurers have cited these reasons—and even a business's own proactive measures to mitigate property damage and lost income—as a basis to drive down the claim's value. Maximizing an insurance recovery often turns on how effectively a policyholder deals with these issues.

4. How to Avoid Insurer Delay and Denial Tactics.

It is illegal for insurers in Florida to misrepresent policy provisions or make material misrepresentations for the purpose of leveraging a lower payout under the insurance contract. But in the face of a natural disaster where claims are in the billions and businesses may be desperate, carriers do not shy away from testing these legal boundaries. Policyholders, in turn, cannot be afraid to push back for what they're rightfully owed.

Florida law provides for fee shifting in insurance disputes and requires an insurer to pay the reasonable attorneys' fees of a policyholder who prevails in litigation. Insurers may also be held liable through a bad faith claim for the consequential damage to a business when the carrier refuses to fairly and timely pay a claim. An experienced coverage attorney familiar with carrier tactics can offer guidance and ensure that business owners are not leaving money on the table when they need it the most.

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