Client Alert

July 2019

Plan, Prepare, Prevent: How to Smoothly Navigate This Year's Anticipated Active Hurricane Season

In this first alert of a series of three, we address how policyholders can plan for this year's hurricane season. The second alert will address how to prepare a claim after a loss in order to maximize the potential recovery, including by taking photographs of any damage and tracking curfews that affect your operations. In the third and final alert, we will discuss how to prevent denials of pending claims based on suit limitations periods. Our goal with this series is to give you a comprehensive outline that will guide you before and after a loss.

With hurricane season here, it is important to have a plan in place to mitigate the extent of financial losses from a storm. This year, forecasters are concerned about unusually warm water near the east coast of the United States and the Bahamas. Specifically, they are alarmed because warmer waters cause storms to increase in intensity rapidly—leaving individuals and businesses with less time to prepare for a severe storm. Below, we address how to plan for this year's hurricane season.

How to Plan for This Year's Storms by Ensuring Adequate Insurance Coverage:

This year, the National Oceanic and Atmospheric Administration predicts up to 15 named storms. Undoubtedly, these storms will have a significant impact on business activity. For instance, damage to tangible assets from these storms will result in business interruption losses, which consequently include revenue declines and lost profits and, in certain cases, result in fractured customer relationships. Even if your business makes it through a storm without any significant adverse impact, damage to your supply chain can lead to production slowdowns and delays. Because damage from a single storm can be catastrophic, it is critical for policyholders to review their existing insurance programs to determine whether their coverage adequately protects them based on their unique business operations and overall risk profile. A comprehensive coverage review will give policyholders a snapshot that will allow them to identify areas of vulnerability—whether due to lack of insurance, insufficient insurance or a gap in coverage that was difficult to detect.

Examples of the Types of Losses Generally Covered by Commercial Property Insurance

Corporate policyholders should ensure they have critical coverages ***before*** a storm hits. Key coverages include:

- Physical Loss or Damage to Insured Property: There is generally coverage for the cost to repair, replace or rebuild property that suffers physical loss or damage. Covered premises are usually listed or scheduled in the policy and may include not only buildings, but also equipment and business personal property such as furniture, machinery and stock.

- Wind v. Flood: Many property policies contain substantially reduced sublimits, or exclusions, for flood damage. Commercial property policies in coastal regions, for example, may also exclude windstorm or provide a sublimit applicable to windstorm damage. Some businesses, however, may have separate windstorm-specific policies that complement their commercial property insurance program. Thus, prior to submitting a claim, it is important that policyholders carefully examine the "cause" of their loss and evaluate whether there are multiple causes.

- Debris Removal: Generally, commercial property policies provide coverage for the costs incurred in the removal of debris from covered property damaged by an insured peril such as windstorm. The maximum policy benefit for this coverage is usually expressed as a percentage of the total loss.

- Expenses Incurred in Attempting to Mitigate or Stop the Damage: Property policies typically cover expenses incurred by policyholders to prevent or minimize loss or, where some loss has already occurred, to mitigate additional loss. In fact, many policies say the policyholder must take steps to safeguard the property and prevent further damage. A failure to do so could jeopardize coverage.

- Extra Expense Coverage: Repairing or replacing damaged property is not the only expense item when property is damaged. Often the cost of operating the business also increases as a result of a storm or its aftermath. Extra expense coverage is intended to indemnify the policyholder for above-the-norm expenses caused by the insured event. Examples may include the cost of a generator when electricity is lost or costs incurred to operate at a temporary location.

- Business Interruption Coverage: Business interruption insurance is designed to cover lost income and profits resulting from the suspension of operations due to covered property damage. This would also include operating expenses that must be paid even if the business is not operational. Typically, this coverage does not apply until the expiration of a "waiting period" designated in the policy—usually 72 hours after the property damage occurs.

- Orders of Civil Authority: Coverage may also be available when business income is lost as a result of governmental directives preventing or restricting access to property. These losses may be recoverable even if the company's own property has not been damaged.

- Ingress/Egress Coverage: Similarly, many policies cover losses when ingress to or egress from a covered property is prevented or hindered by the event. This coverage may be implicated by road closures, the closing of mass transportation and other transportation problems.

- Service and Utility Interruptions: Losses and expenses caused by power, water and telecom outages can also have a significant impact on business operations, and resulting losses may be covered under property insurance policies. This type of coverage, however, is generally not included in a standard commercial property policy. The policyholder will typically have to request the coverage from the insurer by endorsement. What we have seen is that many insureds are unaware that their policies contain exclusions or sublimits applicable to loss from damage to infrastructure such as power lines. For instance, loss from damage to a transformer on the main line is generally subject to higher limits than loss from damage to your individual power line that connects to the overhead line.

- Contingent Business Interruption Coverage (CBI): From our observations following Hurricanes Irma, Harvey and Maria, there was a lack of explicit business interruption coverage when the policyholder's insured property has not sustained extended physical damage. Indeed, insureds were surprised to learn of this gap in their commercial property coverage. Contingent business interruption insurance and contingent extra expense coverage can fill this gap. These common extensions to other insurance reimburse lost profits and extra expenses resulting from an interruption of business at the premises of a customer or supplier of the insured. In other words, the physical damage is not sustained by the insured. Rather, that damage is sustained by some entity with whom the insured has a business relationship and upon whom the insured relied prior to the loss event for a key aspect of the insured's business. The third party could be a supplier of critical materials or components; a transporter of goods, materials or resources; or a wholesaler or retailer who purchases or consumes the insured's goods on a regular basis.

- Spoilage Coverage: Commercial property policies generally contain endorsements that provide coverage for loss from perishable stock at the premises of the policyholder. Perishable stock, for example, can include food at a restaurant, grocery store or bakery that spoils due to lack of refrigeration during or after a storm.

- Extended Period of Indemnity: Under the typical commercial property policy, the period of indemnity ends when the policyholder repairs damaged property. Your policy, however, might include an extended period of indemnity endorsement. That endorsement is extremely important because it extends the period during which you are entitled to indemnity under your insurance policy beyond the time it takes you to restore your damaged property after a storm. Generally, sales and productivity decline even after you have restored your property. The purpose of an extended period of indemnity is to protect the policyholder from that decline in revenue and consequential lost profits.

Thus, to ensure that you are adequately planning for a storm, ensure that you obtain copies of your relevant property insurance policies and review them. Understanding your coverage, even on a general level, will help you identify the steps you need to take immediately following a loss.

* * *

Hunton Andrews Kurth LLP's insurance recovery lawyers assist policyholders in securing the full benefits to which they are entitled in the event of any type of loss, including amounts spent to defend or settle large-scale litigation. For more information, please contact the members of the firm's insurance coverage practice group.

Authors

Walter J. Andrews
wandrews@HuntonAK.com

Andrea DeField
adefield@HuntonAK.com

Yaniel Abreu
yabreu@HuntonAK.com

Contacts

Lawrence J. Bracken II
lbracken@HuntonAK.com

Lorelie S. Masters
lmasters@HuntonAK.com

Syed S. Ahmad
sahmad@HuntonAK.com

Michael S. Levine
mlevine@HuntonAK.com

Sergio F. Oehninger
soehninger@HuntonAK.com