

Client Alert

May 2013

Maximizing Insurance Recovery for Loss Resulting from Tornadoes and Other Natural Disasters

Another natural disaster has devastated a community. By now, all are aware of the tragedy the tornado inflicted on residents of Moore, Oklahoma, destroying lives and property. We join in offering our condolences to those affected by the storm.

Although there is no way to replace lost lives, as with other catastrophes, there are likely to be a myriad of financial issues that will need to be addressed to rebuild and replace property. Maximizing insurance recoveries is one component. This is true for businesses, both local and those far removed whose profits may depend upon locations and properties damaged by the storm.

In fact, just 24 hours after the storm, Oklahoma Insurance Commissioner John Doak told Reuter's news service that damage from the May 20 storm will likely exceed the \$3 billion in damage caused by the 2011 twister in Joplin, MO.¹ Insured losses from the Joplin storm exceeded \$2 billion, and that number is still growing as claims continue to be settled.²

Businesses and individuals may have insurance to cover losses suffered as a result of the tornado. Although it may be difficult to contemplate insurance recoveries in the face of tragedy, policyholders affected by the Oklahoma tornado should take prompt steps to determine whether and to what extent their insurance policies cover their physical, economic and other losses.

Protecting Your Right to Insurance Recovery

When dealing with catastrophic losses, businesses should identify potentially applicable insurance policies promptly, keeping in mind that they may also be covered by insurance policies issued to others. For instance, an insurance policy issued to a contractor, a lessee or a customer may provide coverage to your business as well as to the policyholder. After identifying potentially applicable policies, the insured should notify the insurance companies of the actual or potential losses. Identifying potentially applicable insurance policies and providing notice to those insurance companies are important steps in preserving rights under the policies because insurers may argue that late notice vitiates their coverage obligations. In addition, providing immediate notice may provide access to insurance company representatives on the ground at the disaster sites who may be able to provide emergency funds.

Businesses should also keep records regarding the losses suffered, including documenting physical damage, amounts paid to prevent further damage or remedy existing damage, and amounts lost due to the disruption of business activities. Maintaining these records will prove helpful in seeking recoveries under insurance policies.

¹ <http://www.reuters.com/article/2013/05/21/us-usa-tornadoes-insurance-idUSBRE94K16H20130521>.

² <http://www.reuters.com/article/2013/05/21/us-usa-tornadoes-insurance-idUSBRE94K16H20130521>.

Storm-Related Losses Typically Covered By Insurance

Because natural disasters cause many different types of losses, business should be aware of the variety of potentially available coverages.

Physical Loss Coverage – Many policies cover physical loss, such as damage to insured property. These policies will cover costs incurred in repairing, replacing or rebuilding damaged or lost property. The policies will also generally cover the cost of preventative measures taken to avoid further loss or further damage.

Business Interruption Coverage – Business interruption coverage may provide coverage for lost income due to damage to property. This coverage is intended to make a business whole while it rebuilds or replaces the lost or damaged property. For example, a national retailer with a local outlet in the affected area may recover lost income associated with the local outlet while that location rebuilds.

Contingent Business Interruption Coverage – Contingent business interruption coverage typically applies to an insured business whose operations are interrupted by damage to the property of others, such as suppliers or other business partners. Claims under contingent business interruption coverage may exist where an insured business located far from Oklahoma sustains a business loss that is attributable to physical damage to the property of others and on whom the insured business relies, such as a customer, a supplier, a data center or a transporter.

Extra Expense Coverage – Extra expense coverage typically covers the additional or increased costs a business incurs in order to continue its operations while the business is still affected by the loss event or physical damage.

As with all coverages, each coverage outlined above is subject to its own actual terms and conditions. And, the interpretation of those terms and conditions can depend largely on which state's law applies to the insurance policy. Any available coverages are also typically subject to limits, and certain coverages, such as those above, may be subject to sub-limits. A thorough review of any potentially applicable coverage, therefore, is strongly recommended. How the claim is initially presented to an insurer may have long-term consequences regarding its adjustment and any ultimate recovery. Moreover, while insurers typically engage counsel immediately in the face of a catastrophe to address the complicated issues that may arise, policyholders, naturally more focused on the immediate needs of recovery, may not seek immediate advice.

In sum, businesses, both those in the neighborhood of the catastrophe and those dependent on businesses in that area, should document their losses, carefully consider available insurance coverage by looking closely at the applicable terms and conditions as interpreted under the governing law, and promptly provide notice to any and all insurers who might owe coverage for storm-related losses. Consultation with persons experienced with the insurance claims process is also advisable.

Should you have any questions concerning insurance for storm-related and other catastrophic losses, Hunton & Williams' insurance recovery lawyers are ready to assist.

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