

Client Alert

October 2017

Insurance Should Be Available For California Wildfire Losses

With the East Coast and Caribbean still trying to cope with the damage inflicted by Hurricanes Harvey, Irma and Maria, the West Coast is contending with its own natural disaster, with wildfires impacting much of Northern California. Hunton & Williams LLP offers our sympathies and condolences to those affected.

As the fires in Northern California continue to spread out of control, the loss of life tragically continues to climb while property loss estimates already are in the hundreds of millions of dollars. More than 2,000 homes have been destroyed; two well-known Napa Valley wineries are in ruins and acres of vineyards are destroyed. The business interruption losses to the wine industry alone could be staggering.

Although there is no way to replace lost lives, as with other catastrophes, there are likely to be numerous 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 fires.

Unlike some of the losses stemming from the storms that ravaged the southeast and Caribbean and from other West Coast catastrophes such as earthquakes, losses from wildfires should be largely covered by insurance. Although it may be difficult to contemplate insurance recoveries in the face of tragedy, policyholders affected by any disaster 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 and the period of time when the losses will be incurred. Maintaining these records will prove helpful in seeking recoveries under insurance policies.

Losses Caused by Wildfires Are Typically Covered by Insurance

Because natural disasters cause many different types of losses, businesses should be aware of the variety of potentially available coverages. However, when it comes to fire, most commercial property policies include this among the perils for which coverage is afforded.

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 damage.

Business Interruption Coverage – Business interruption coverage may provide coverage for lost income due to property damage. 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 and while customers are kept from the area due to the fire damage.

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, attractive properties of others or other business partners. Claims under contingent business interruption coverage may exist where an insured business located far from Northern California 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 wine maker who relies on Napa Valley grapes, a customer who relies on the wine made from those grapes, a supplier whose customers are waiting on the delivery of the wine and restaurants whose patrons enjoy consuming the wine.

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.

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As with all coverages, each coverage outlined above is subject to its own actual terms and conditions. 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 sublimits. A thorough review of any potentially applicable coverage 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 in the location of the catastrophe and those dependent on businesses in that area should document their losses, carefully consider available insurance coverage (including for lost business income) 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 fire-related losses. Consultation with experienced coverage counsel also is advisable.

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

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