

Client Alert

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Hurricane Preparedness: Is Your Insurance Program Ready for The Storm?

It's that time of year again, when the surf churns and the winds howl to a piercing whistle and insurance companies seemingly forget that you've faithfully paid exorbitant premiums for years. As Florence approaches the eastern US coastline, significant damage to property and resulting interruptions to businesses are expected in areas affected directly and indirectly by the storm.

Now that you've secured your physical assets as much as possible, have you confirmed that your insurance program is ready for the storm? In this client alert, our insurance recovery team provides critical steps that your insurance team should take now along with a brief summary of the insurance coverages that will likely be implicated upon Florence's landfall.

Hurricane Preparedness for Your Insurance Program

Although Florence may affect different businesses in different ways, the following steps have broad application to all hurricane-related losses, as well as other types of insurance claims:

- **Know Your Insurance Policy: What Does It Say and Where Can It Be Found?**

Obtain copies of your relevant property insurance policies now and read them. Knowing your coverage, even on a general level, will help you to anticipate the immediate steps to be taken following a loss including how and where to notify your insurance company of any loss. Understanding your coverage now also will facilitate anticipation of covered post-loss expenses.

- **Be Prompt: Notice, Statutes of Limitation and Contractual Suit Limitations Provisions**

Insurance companies will quickly become overwhelmed following a hurricane and they will rely on your prompt notice of a loss to begin the adjustment process. Many policies include strict notice and claim submission provisions. For example, National Flood Insurance Program policies require that proofs of loss, which can take time to prepare, be submitted within 60 days. Homeowner's and commercial property insurance policies usually require that proof of loss be submitted within a certain time after being requested by the insurer. Nonetheless, these policies usually include a shorter time period for submitting debris removal costs and invoices, even if the policies do not contain any other claim or proof of loss deadlines. Finally, policies may restrict the time permitted to file a claim against the insurer after the loss should the insurer fail to pay amounts due. Understanding these provisions now will help ensure that you comply with all conditions post-storm to expedite payment due.

- **Catalogue Insured Assets; Document Business Income**

The best way to ensure a prompt and comprehensive loss adjustment is to demonstrate the extent to which property has been damaged and income has been interrupted. A pre-loss inventory of insured assets will provide your insurer with a roadmap for adjusting your covered loss, even if adjusters are unable to reach your property for weeks after the storm such as was the case in Puerto Rico following

Hurricane Maria. Likewise, documented pre-loss income will provide the foundation for your post-loss claim of diminished profits. After the loss, set up a general ledger to capture all storm-related costs, expenses and time—including costs incurred in taking steps to mitigate losses pre- and post-storm.

- **Document the Insurance Adjustment Process**

Be sure to keep a log of all documents to and from your insurer, as well as a log of your phone calls or other communications with the insurer or your assigned adjuster. The insurance or unfair trade practices statutes in many states require that your insurer communicate with you promptly, including issuing a prompt coverage determination and paying any undisputed amounts of the loss. Accordingly, be sure to log these communications with your insurers in the event you later end up in litigation over your claim.

- **Have An Insurance Response Team or Protocol *Before The Loss Occurs***

Particularly for commercial insureds, ensure that you have the proper team in place before the loss occurs so that you can minimize recovery time and avoid the frenzied competition for scarcely available expertise after the loss. In addition, ensure that you: define plans for reopening or relocating and under what conditions; log evacuation orders or applicable curfews after the storm that impact your business to support any business interruption claim; continue checking and logging power outages post-storm; identify temporary measures needed to resume operations and any extra expenses that you will incur to try to reopen, such as the costs of generators or even costs to rent additional property to run your business while repairs are made to your primary business location; ensure that all property damage is photographed or recorded on video and that all repair costs, even if seemingly insignificant, are logged; appoint one person to represent your company with the insurance adjuster and make sure they keep track of all adjuster communications; and assign a special accounting code or establish a ledger to account for all losses related to the storm.

Types of Losses for Which Insurance May Be Available

Different businesses are affected differently by the same storm. For instance, direct physical loss to one company might indirectly impact another, such as a product manufacturer hundreds of miles away that relies on the damaged business for the sale or manufacture of components. The storm also might affect companies supplying or relying on transportation, logistics and other essential support services.

Insurance may pay for these losses. Today's commercial property policies contain a number of specialized coverages. Depending on the facts of the loss, one or more of those coverages may apply:

- **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. Fencing, signage and other property may also be included in your policy.
- **Wind v. Flood:** Many property policies contain substantially reduced sublimits, or exclusions, for flood damage. Commercial property policies in coastal regions may also exclude windstorm damage or provide a sublimit applicable to windstorm damage. Some businesses may have separate windstorm-specific policies that complement their commercial property insurance program. Thus, it is important that policyholders carefully examine the "cause" of their loss, and evaluate whether there are multiple causes, before submitting a claim.
- **Debris Removal:** Many commercial property policies provide coverage for the costs incurred in the removal of debris of 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.

- **Water Damage Caused by Burst Pipes and Water Mains:** In general, water damage from a burst pipe inside a business will be covered. If an outside pipe or main bursts and causes damage, that also should be covered. It may be necessary, however, to demonstrate that the damage did indeed result from the burst pipe. If the insurer concludes that poor drainage—which is often a non-covered maintenance problem—caused the break or resulting damage, coverage may be denied. A claim also might be denied if policyholder negligence, such as leaving a vacant building without heat, caused the break. Further, even if the insurer does pay for the water damage, it may refuse to pay to repair the pipe itself, contending that the pipe was damaged by “wear and tear,” which is often an excluded peril.
- **Expenses Incurred in Attempting to Mitigate or Stop the Damage:** Property policies typically cover expenses incurred in taking preventative measures to avoid loss or, where some loss has already occurred, further 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 goes up during the time when the business is affected by the 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 (typically 72 hours after the property damage occurs).
- **Contingent Business Interruption Coverage (CBI):** Contingent business interruption insurance and contingent extra expense coverage are common extensions to other insurance, which reimburse lost profits and extra expenses that result 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.
- **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, such as evacuation orders or curfews. An example of a covered civil authority directive would be that issued by Monroe County prohibiting access to the Florida Keys (even by residents) following Hurricane Irma. 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 come into play in the event of 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.

The precise terms of the insurance policy and applicable law govern the existence and extent of coverage. In addition, policies are often endorsed or contain exclusions that may expand or reduce coverage. Some applicable limitations on policies include sublimits on certain losses that limit the total available insurance for a particular type of damage, exclusions for flood or water damage, earth movement exclusions, government action exclusions that may not permit recovery for interruptions in business where government authorities limit access, etc. The burden is always upon the carrier to prove the terms and applicability of any exclusion of coverage in a policy. Exclusions are read narrowly and, where found to be ambiguous or not sufficiently notorious in the policy, they will be disregarded or construed in the light most favorable to the insured and in favor of coverage.

Policyholders are always best served by a careful analysis of the terms of their policies and the controlling law governing their insurer's obligations, as well as a precise documentation and presentation of their loss during the claim process. From our extensive experience with Hurricanes Irma, Maria, Harvey, Katrina, Andrew, Wilma, Charley, Rita, Ike and others, the Hunton Andrews Kurth insurance recovery team knows that the claims process can be difficult to navigate. Having experienced legal counsel often is the key to success in perfecting these claims and ensuring maximum recovery from your insurer.

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