

# Lawyer Insights

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## The First 60 Days Post-Irma are Critical to Your Insurance Recovery

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Now, after Hurricane Irma, the cleanup—and the insurance claims process—begins. The first 30 to 60 days post-storm are critical in ensuring coverage for your property damage and business interruption losses after the storm. Below, we first provide a checklist to guide both commercial and individual insureds in the first few weeks after the storm. Then, we address the key commercial coverages that business insureds may have to help them recover from lost business income post-storm.

### Hurricane Irma Claims Checklist

As soon as it is possible to do so, both individual and business insureds should take the following steps to maximize coverage for their Hurricane Irma claims.

- **Evaluate and document the damage.** Take photographs of the exterior and interior of property, including personal property. This is important to support your claim and to avoid any dispute with your insurer over what was damaged by the storm and the condition of the property post-storm and before mitigation efforts.
- **Locate policies.** Gather all potentially applicable insurance policies (wind-only, flood, property). Call your insurance agent or insurer if you are having trouble finding your policy. As we discussed in our article last week, while Florida law requires residential property insurers to offer coverage for windstorms resulting from hurricanes, commercial nonresidential property insurers are not required to provide coverage for windstorm damage. Thus, Hurricane Irma damage may implicate multiple separate policy forms. Locate and review your property policy, wind-only policy (if applicable) and flood policy.
- **Provide prompt written notice to each insurer.** It is extremely important to provide written notice to your insurance agent and insurance company as soon as possible post-storm. Policies typically require "prompt notice" or "notice as soon as practicable" and Florida courts have routinely upheld these provisions, oftentimes affirming coverage denials where insureds fail to provide prompt notice after discovering damage. At a minimum, provide written notice of damage to all potentially applicable insurers (windstorm, flood, property) even if you are unsure whether or not your losses will exceed your deductible. It is better to ensure a timely submission now rather than risk a coverage denial based on late notice when you later determine the damage you thought was within your deductible was actually far more significant and costly. Your written notice should include: name and contact information for the

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insured, the location of the loss/damage, the date and time that the damage occurred and a brief description of the loss.

- **Take steps to mitigate the damage.** Your policy likely covers expenses incurred in taking preventative measures to avoid further loss post-Irma, such as boarding up broken windows. Indeed, the applicable policies will require that you take action to mitigate existing damage and prevent any further damage to the property. Nonetheless, it is important to run any mitigation plans by your insurer after filing your claim to make sure that your efforts will not interfere with their investigation of the damage. Requesting insurer consent to estimated costs of mitigation efforts now will also expedite your reimbursement of these costs during the claims process.

- **Debris removal costs are likely covered.** Your policy likely covers costs incurred in removing debris from your policy. This coverage is usually stated as a percentage of your total limits. Importantly, this coverage may have a different reporting deadline than other policy coverages, such as 90 or 180 days after the loss.

- **Be cognizant of proof of loss deadlines.** Check the proof of loss deadlines in each potentially applicable policy. If the deadline is short (120 days or less), considering asking your insurer now, in writing, for an extension of that deadline, and preserve evidence of that request. Note, however, that your deadline will not be extended unless you receive written confirmation of the extension from your insurer.

- **Prepare a proof of loss.** The proof of loss is a document that identifies the property damaged and documents all amounts incurred. Oftentimes the proof of claim or proof of loss will include items like before and after photographs, receipts, invoices, quotes and other records. Be sure to check with your insurance company about the specific information needed as well as the applicable deadline for submitting the proof of loss. As discussed above, consider requesting an extension of this deadline in writing.

- **Be cognizant of your duties under the policy.** Property insurers are entitled to conduct a reasonable investigation of the loss with the cooperation of the insured. Most policies will include a section titled "Duties in the Event of Loss," outlining the insured's cooperation requirements such as permitting the insurer to conduct an "examination under oath" (EUO), requiring that the insured provide certain documents or maintenance records, or allowing the insurer to inspect the property. Insureds should consider consulting knowledgeable coverage counsel to help guide them through what the policy does and does not require of them, as well as guiding them through the claims process.

### Coverage for Lost Business Income for Commercial Insureds

Beyond the damage to insured property caused by Hurricane Irma, business insureds face lost earnings in the time it takes to repair and remediate this property damage or even to simply regain access to the affected area. Fortunately, your policy may include business interruption insurance coverage that is designed to specifically address these loss scenarios. This coverage is designed to cover lost income or profits caused by the interruption of business activities due to physical damage to property. Business interruption and related coverage endorsements may cover loss resulting from an inability to open for business; reduction in business income when the business remains open but cannot operate at full

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capacity; loss resulting from civil authority orders barring access to an insured business; and loss resulting from physical impediments to accessing the insured business, such as flooded roads. In addition, these policies may include coverage for lost income due to service and utility outages effecting business interruptions—an important coverage in light of the current power outage estimates.

Importantly, the damage necessary to trigger these coverages need not be to your insured property—it may be enough that the damage occurred at the property of a key vendor or supplier, or simply in the vicinity of the business, so long as it results in lost earnings to you. This type of coverage, known as "contingent business interruption" does, however, require that the physical damage be of the type covered under the applicable policy. This coverage may include the loss of key components in the company's or retail outlet's supply or distribution chain and the inability to ship goods into or out of a retail facility, warehouse or other location necessary to the operation of the business or retail outlet.

It is crucial for commercial insureds to act now to ensure that their claims for loss of business income and other business-interruption losses are honored and paid in full by their insurers. Like the coverages discussed above, business-interruption coverage typically requires that notice of a claim be made "as soon as practicable," and also typically have strict deadlines within which proofs of loss must be submitted. A failure to comply with these deadlines may bar coverage. To maximize the value of their business-interruption claims, commercial insureds should thus immediately provide written notice of business-interruption losses, whether they are losses for a full shutdown, a partial shutdown or a break in the supply chain or vendor's damage.

Florida insureds should take the steps outlined above and consult experienced insurance coverage counsel to help guide them through the claims process. Businesses may also need to consider retaining experienced accounting firms to help quantify and best present these losses to the insurer. For all Florida insureds, quick action now will help ensure that you receive the full benefit of coverage from your policies—the benefit that you bargained for.

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