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Maximizing Recovery For Hurricane Sandy Losses

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It should never be assumed that a loss is not covered by insurance; when in doubt, tender the claim, and do so as soon as possible. Not only does timely tendering of the claim avoid any potential "late notice" objection — a favored defense by carriers under New York law — but it will also benefit the policyholder's claim by allowing it to pursue recovery when the insurance companies have the most resources available, e.g., local adjusters on the ground, claims people, emergency response teams and support personnel.

Once the news cycle — i.e., the spotlight — has moved from the disaster, resources may not be as plentiful and carriers, as well as regulators, may not be as responsive. For example, in the spotlight just days after Sandy struck, regulators in New York and Connecticut notified carriers not to apply the larger "hurricane" deductibles to policyholder claims in their states because Sandy was not at hurricane strength when it came ashore.

Maintain and Preserve Documentation

Critical first steps following a loss include maintaining and preserving documentation of physical damage to property, tracking expenses incurred to mitigate or prevent further damage and calculating and monitoring losses due to interruption of normal business activities. Insureds should not forget to track and document expenses to relocate personnel, rent generators, establish alternative operations and the like.

Types of Losses for Which Insurance May Be Available

Physical Loss or Damage to Insured Property

Coverage may be available for the cost to repair, replace or rebuild property that suffers physical loss or damage. Covered premises are usually listed and 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

Most property policies will cover wind damage. Many property policies contain substantially reduced sublimits for flood damage. Some may not cover that type of damage at all. It is important, therefore, that policyholders avoid any unnecessary characterization of the "cause" of their loss.

Expenses Incurred in Attempting to Mitigate or Stop the Damage

Property policies typically cover expenses incurred in taking preventative measures to avoid loss. Indeed, many policies contain an affirmative requirement that the insured take steps to safeguard the property and prevent further damage.

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 insured for above-the-norm expenses caused by the insured event.

Business Interruption Coverage
Property policies generally cover lost income or profits caused by the interruptions and often, slowdowns of business activities due to physical damage to the insured's property. The basic purpose of the coverage is to make the insured whole during the period it takes to rebuild or replace the property destroyed.

Contingent Business Interruption Coverage
Even if a company's own property has not been damaged, its business may be interrupted by damage to the property of others, such as suppliers or other business partners. In such circumstances, the company's lost income often is covered by contingent business interruption coverage. Calculating business interruption losses of any kind is often a complicated task, so the insured needs to understand exactly how to prepare and present these losses.

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 (e.g., curfews) or because of an inability to access the business (e.g., road closures, subway shutdowns). These losses may be recoverable even if the company's own property has not been damaged.

Service and Utility Interruptions
Losses and expenses caused by power, water and telecom also may be covered under property insurance policies.

The precise terms of the 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 damage, exclusions for flood or water damage, earth movement exclusions and government action exclusions that may not permit recovery for interruptions in business where government authorities limit access, etc.

Because of the complexity of losses and the applicability of insurance, conditions and exclusions, insureds should strive to be prepared early in the process.

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