Client Alert

July 2020

Before the Hurricane Warning, Ensure Your Insurance Program is Ready to Weather the Storm

This year, the National Oceanic and Atmospheric Administration predicts up to 19 named storms, 6 to 10 of which they believe are likely to become hurricanes. Within the last few days, Hawaii narrowly escaped Hurricane Douglas, and Texas is experiencing power outages and significant flooding from Hurricane Hanna. As we write this alert, Potential Tropical Cyclone Nine has the Caribbean and Florida in its sights. In short, hurricane season has arrived.

Now is the time to ensure your insurance program is hurricane-ready. In this client alert, our insurance coverage team provides critical steps that you should take now to ensure that you protect your assets and maximize recovery in the unfortunate event of a hurricane claim.

1. Know Your Coverage: What Does Your Policy Say and Where Can It Be Found?

Obtain copies of your relevant property insurance forms and read them now. Knowing your coverage, even on a general level, will help you anticipate the immediate steps to take following a loss, including how to notify your insurer of losses to your covered property.

Policyholders must ensure they have the correct coverage in place for flood and windstorm-related damage. Commercial property policies in coastal regions, such as Florida, may exclude windstorm damage entirely, may limit coverage with a windstorm sublimit that is less than the policy's overall limit, or may contain a high deductible. Some businesses have separate windstorm-specific policies meant to complement their commercial property insurance. Property insurers use similar methods to reduce coverage for flood damage, including sublimits, or exclusions that apply to storm surge.

Even if your business makes it through a storm without any significant physical damage, damage to your supply chain can lead to production slowdowns and delays that impact your bottom line. Further, evacuation orders and storm-related curfews may impede business operations or your customer's ability to access your business. Because damage from a single storm can be catastrophic, policyholders must review their existing insurance programs to determine whether their coverage adequately protects them based on their unique business operations and overall risk profile.

In addition to windstorm and flood coverage, corporate policyholders should ensure that they have the following specific coverages in place *before* a storm hits:

- Physical Loss or Damage to Insured Property: Policies generally cover 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. Although typically a lesser concern, many policies do not include coverage or limit coverage for outdoor landscaping and paved surfaces, like parking lots.

- Debris Removal: This covers costs incurred in the removal of debris from covered property damaged by an insured peril such as a windstorm. The maximum policy benefit for this coverage is usually expressed as a percentage of the total loss.

- Expenses Incurred in Attempting to Mitigate Damage: Property policies often cover expenses incurred to prevent or minimize loss or, where some loss has already occurred, to mitigate additional loss. In fact, many policies say the policyholder must take steps to safeguard the property and prevent further damage. Failure to do so might jeopardize coverage.

- Extra Expense Coverage: Extra expense coverage is intended to indemnify the policyholder for above average expenses incurred to continue operating after damage caused by the insured event. Examples may include the cost of a generator when electricity is lost or costs to operate at a temporary location.

- Business Interruption Coverage: Business interruption coverage is designed to cover lost income resulting from the total or partial suspension of operations due to covered property damage. Typically, this coverage does not apply until the expiration of a "waiting period" designated in the policy—usually a period defined in hours.

- Orders of Civil Authority: Coverage may also be available when business income is lost as a result of government directives, issued because of property damage to other property, which prevent or restrict access to the insured property. These can include evacuation orders or curfews. 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 entry to or exit from a covered property is prevented or hindered by covered property damage, such as downed trees covering a road or a broken bridge.

- Service and Utility Interruptions: Some policies may also provide coverage for business interruption losses and extra expense caused by power, water, and telecom outages if those outages are the result of an insured event. This coverage is typically sublimited.

- Contingent Business Interruption Coverage (CBI): Contingent business interruption insurance and contingent extra expense coverages provide reimbursement to the policyholder for lost income and extra expense resulting from property damage to a separate, non-insured property, often in the policyholder's supply chain. The third party could be a supplier of critical materials or components; a transporter of goods, materials or resources; or a wholesaler, retailer, or customer who purchases or consumes the insured's goods on a regular basis. Some policies may offer this coverage for "leader properties" or "attraction properties" within a specific mile radius of the insured property.

- Extended Period of Indemnity: Policies may also provide for an extended period of indemnity, thus extending the time of covered business interruption losses from the time the property is repaired for several additional months. This coverage is designed to ensure coverage for any "ramp up" period the policyholder experiences to ensure coverage until business returns to normal.

- Spoilage Coverage: Commercial property policies for food-service and hospitality industry insureds may also contain endorsements providing coverage for loss of perishable stock at the premises of the policyholder.

2. Have an Insurance Response Team or Protocol in Place Before the Storm

Commercial insureds should confirm that they have the proper team in place before the loss to minimize down-time and maximize recovery efforts post-storm. This team should prepare a pre-loss inventory of insured assets in order to provide a roadmap for your insurer to adjust your covered loss, even if adjusters are unable to reach your property following the storm such as was the case in Puerto Rico and the U.S. Virgin Islands immediately following Hurricanes Irma and Maria.

To ensure you adequately capture losses post-storm, the team should set up a general ledger to capture all storm-related costs, expenses, and time – including costs incurred to mitigate pre- and post-storm losses. You should also designate one person or department for submission of all storm-related invoices, quotes, and other contracts. To the extent you have multiple locations, you should create a shared file to document physical damage, applicable evacuation orders, applicable curfews, power outages, supply chain disruptions, times of closing pre-storm and opening post-storm, and descriptions of mitigation efforts and extra expenses – such as purchasing a generator or renting other property to run your business while repairs are made. Collecting these facts in real time will help you later when you present your claim to the insurer.

3. Present Your Claim to Maximize Recovery

Following the storm, ensure your business takes all steps necessary to maximize recovery.

- **Provide Prompt Notice**

Property insurance policies require prompt notice of the loss. Failure to provide prompt notice will result in the insurer asserting various defenses to coverage. Further, providing prompt notice is critical to ensuring that your claim is adjusted promptly. Insurer workforces are stretched thin following major catastrophes. For example, Floridians filed approximately 909,000 residential property insurance claims following Hurricane Irma and businesses filed over 61,000 commercial property claims.[1]

Your notice should contain a basic description of the loss, including where, when and how the loss occurred, as well as your contact information. Your broker or agent can assist you in reporting the claim. After successfully reporting the loss, the insurance company will assign an adjuster to handle your claim.

- **In Conjunction with Providing Notice, Begin Preparing a Proof of Loss**

Your policy likely requires submission of a proof of loss and may require that it be provided within a designated time period after the loss. Be aware of these deadlines now, so that you can request an extension of any deadlines, in writing, following the loss, if needed. In addition to any specific requirements set forth in your policy, you should use photographs, receipts, videos, and any other available records to substantiate your claim.

Specifically for policyholders with commercial operations, ensure that you have a team in place before a loss in order to minimize recovery time and avoid the frenzied competition for scarcely available expertise after the loss. This team should include forensic accountants and trusted contractors and engineers to provide estimates of repair costs and ensure that proposed repairs comply with any applicable building code.

- **Keep Records of the Claims 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 insurance adjuster. Many states have enacted insurance or unfair trade practices statutes that require insurers to communicate promptly, including issuing prompt coverage determinations and paying undisputed amounts as soon as reasonably possible. Ensure that

[1] *See* HURRICANE IRMA CLAIMS DATA, Florida Office of Insurance, https://www.floir.com/Office/HurricaneSeason/HurricaneIrmaClaimsData.aspx (last visited July 28, 2020).

you keep a log of insurer communications, so that you have this timeline ready in the event you end up in litigation over your claim.

- **Understand the Insurer's Coverage Position and Prepare to Push Back on Denials or Delays Where Appropriate**

Specific policy terms and applicable law govern the existence and extent of your windstorm coverage. In addition, policies often include endorsements or exclusions that may expand or limit coverage. These may include sublimits on certain losses that limit the total available insurance for a particular type of damage (such as flood) or exclusions that bar all coverage for damages caused by certain risks, like flood, storm surge, earth movement, and others.

However, it is the insurer's burden to prove that an exclusion applies. Courts interpret exclusions narrowly and, where found to be ambiguous, courts will often interpret the exclusion in favor of coverage for the policyholder.

Individual and corporate policyholders are best served by a careful analysis of the terms of their policies and the controlling law governing their insurer's obligations, as well as precise documentation and presentation of their claim. From our extensive experience resolving insurance disputes over coverage for damage caused by Hurricanes Michael, Irma, Maria, Harvey, Katrina, Wilma, Charley, Rita, Ike, Andrew, and others, the Hunton Andrews Kurth insurance coverage team knows that the claims process can be difficult to navigate. Retaining experienced coverage counsel to help you analyze your policies is critical to understanding your rights, the insurance company's obligations, and the smoothest pathway to getting your business back on track after a storm by maximizing your insurance recovery.

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