

## RISK

# How to Create the Calm Before (and After) the Storm

By John N. Ellison and Pamela D. Hans

**W**hen it comes to a natural disaster, no one is safe. A producer whose plant is damaged and possibly shut down, a farmer whose corn crop is decimated by hail, a builder whose construction is delayed because of severe and unpredictable weather—virtually everyone in the ethanol industry can be impacted by the unexpected. While picking up the pieces after a natural disaster can be a difficult task, there are 12 crucial steps that a policyholder can take—both before and after such an event—to help reduce the havoc that the destructive force of nature can wreak on a business.

### 1. Look to first-party insurance

Most businesses affected by a storm will look to first-party insurance policies which protect policyholders from losses suffered to their own property or expectations of profit. Often called "property" insurance policies, first-party insurance can come in the following policies: inland marine, fire, boiler and machinery, equipment breakdown or multi-peril. Multiple policies and coverages, and the misleading names associated with them, can create confusion and cause policyholders to ignore areas of coverage that might be applicable. Therefore, regardless of name, review all insurance policies for potential avenues of coverage.

### 2. Property damage, business income and extra expense coverage:

Property insurance policies usually contain at least three basic types of coverage: property damage, business income and extra expense. Property damage coverage pays for physical loss or damage to buildings and business property—machinery, equipment, inventory, raw materials, etc.—as well as property of others in the policyholder's control. Business income coverage pays for the policyholder's loss of net revenue after expenses (profit) and the policyholder's unavoidable continuing expenses during the loss period. Extra expense coverage pays for the policyholder's costs in minimizing or avoiding a business income loss or further property damage.

After a natural disaster, keep track of the expenses that wouldn't normally be incurred if a disaster didn't strike. It is important to document expenses and keep good records before a natural disaster. If a claim must be submitted, the documents to support it will then be ready.



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### 3. Keep insurance policies in a safe place

Always be aware of the location of all applicable primary, excess, local and global property insurance policies, as well as inland marine, multi-peril, fire and business owners policies that may apply to claims for property damage or business interruption. After a disaster, the loss of life and



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the destruction of offices, records and files may make this task more difficult. Knowing the names of at least some of the insurance companies ahead of time may, at the very least, start the process. Send a written request for the policies. If the insurance broker's files are available, contact that office for policy copies.

### 4. Retain an engineer or consultant if risk to structural integrity

If there is concern a storm may have affected a property's structural integrity, consider speaking with an engineer or other consultant to help determine whether steps should be taken to preserve the property's structural integrity. First-party property insurance policies generally require insurance companies to pay for measures that the policyholder takes to mitigate damages, the cost of an engineer or consultant to recommend or help implement measures designed to mitigate damages, and the actual cost of structural supports.

### 5. Give notice

If there is any possibility that one has a claim, give notice now, preferably by instructing the insurance broker to give notice under all policies that could be implicated. Request a copy of the broker's notice letter.

It is wise to give notice even if one doesn't have a complete handle on all the particulars of a claim. The notice can always be supplemented later.

### 6. Consider insurance coverage under other insurance policies

The impact of a disaster can be far-reaching. Consider what notice (such as notice of an "occurrence" or "circumstances") must be given under liability insurance policies, including general liability insurance, and

errors and omissions insurance, in the event of claims by third parties. Also, determine if the business or entity is an "additional insured" under the insurance policies of others. Address other insurance coverage issues under life insurance, workers compensation and any other form of insurance that may apply to claims surrounding the natural disaster.

### 7. Document all loss items and emergency expenses

Insurance companies often question, reject and contest loss items submitted for reimbursement by policyholders. Keeping complete and accurate records of loss items is extremely helpful to ensure that policyholders are reimbursed for the amount of their insurance claims. If possible, use video and photographs to document losses.

### 8. Coverage may be available without direct physical loss or damage

Businesses that have suffered losses from a natural disaster that are not related to direct physical damage to their property may still have coverage under property insurance policies. Check for contingent business income coverage, extra expense coverage, civil authority clause, ingress/egress coverage, and utility and communications service interruption coverage.

These and similar provisions may provide coverage for events that interfere with suppliers or customers, or prevent or hinder access to premises.

### 9. Emergency repairs and preservation of property



Taking appropriate steps before and after a natural disaster can help a policyholder maximize insurance recovery.

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In some cases, and at least initially, emergency efforts may be coordinated and performed by governmental agencies and officials. However, policyholders should be mindful that their insurance policies will typically state that certain measures to mitigate losses should be taken. If one is prevented from operating because of government orders (sometimes referred to as "civil authority") restricting access, the first-party property policy, particularly the business income coverage, may allow one to recover for lost business income during the time that they are prevented from operating.

### 10. Secure tolling agreements with your insurance company

Property and business interruption losses of this magnitude may well result in claims processes that take insurance companies and policyholders months, if not years, to resolve. Provisions limiting the time for one to provide a "proof of loss" or to repair or replace damaged property can be, and often are, extended by written agreement. Furthermore, many property policies require the policyholder to file a lawsuit within one year even if the insurance company hasn't completed its adjustment of the loss.

### 11. Pay attention to insurance policy renewals

Depending on the natural disaster, such a catastrophe might cause insurance programs to lapse and create unintended gaps in a policyholder's insurance coverage because of the loss of both broker and insurance company offices.

### 12. Consider help in submitting a claim

If the claim is big enough, consider hiring a knowledgeable insurance coverage attorney or an accounting firm that specializes in property insurance coverage accounting. In large losses, it can be helpful to have an attorney involved immediately. The insurance company will almost certainly hire a supposedly "independent" adjuster, as well as one or more accounting firms and a law firm that specializes in representing insurance companies.

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