

Tips For Avoiding An Insurance Coverage Catastrophe After A Hurricane Loss

Weeks after Hurricane Ike, a Texas sized Category 2 storm that ripped through the Gulf of Mexico, Galveston and Houston, businesses are still shut down and operations are only slowly being restored. The last thing they need is a prolonged and difficult fight with their insurance companies in order to recover for the property loss, business income loss and extra expense they have suffered. Yet, if the experience of policyholders after Hurricanes Katrina and Rita is any guide, businesses will have to be proactive and vigilant if they are to successfully resolve their insurance claims anytime soon. The following tips can greatly enhance their chances of success.



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1. Be Proactive in Presenting the Claim.

Provide the insurance adjuster with all relevant information about your loss without waiting to be asked. Also, do not wait until all of the information about all elements of the loss can be presented in a neat package. Provide information as it becomes available.

2. Give the Insurer a Reasonable Deadline For Resolving the Claim.

Under the best of circumstances, major insurance claims tend to be resolved only when the policyholder pushes them to resolution. When competing for attention with countless other insureds after a catastrophe, it is imperative that the policyholder make clear at the outset of the adjustment process that it will cooperate fully and provide information promptly, but that the claim must be settled by a date certain. Pick a realistic date and stick to it, if need be threatening to file formal proofs of loss or to assert claims of bad faith claims handling.

3. Comply With All Insurance Policy Requirements.

Most property insurance policies impose a number of requirements upon the policyholder, including timely notice and deadlines for the filing of proofs of claim and the commencement of coverage lawsuits. The failure to comply with these requirements might result in a forfeiture of

coverage. So, be sure to comply with these requirements or obtain the written agreement of the insurance company to adjourn deadlines.

4. Assemble a Team of Experts to Prepare and Negotiate the Claim.

When evaluating and negotiating claims, insurance companies call upon the expertise of forensic accountants, coverage lawyers and insurance adjusters to protect their interests. Policyholders may find themselves at a distinct disadvantage if they match the insurers only with in-house resources that are not well versed in the intricacies of coverage analysis and claim quantification (particularly business interruption computation). For large claims, policyholders should consider the services of forensic accountants, loss adjusters with expertise in policy analysis, property loss and claim preparation and, if necessary, coverage counsel.

5. Demand Partial Payments.

Typically, the insurer will make a "good faith" partial payment and then pay little or nothing more until a final negotiation over all of the open issues. This allows the insurer to hold onto funds that should be paid out for undis-

puted portions of the claim and increases its leverage for later negotiations. Counter this strategy by forcing the insurance company to commit to a position on coverage and to pay the amounts due under its own analysis of the claim. Start by demanding a coverage determination. Typically, insurers issue vague reservations of rights letters that quote numerous policy provisions without explaining how those clauses apply to the claim. Such a letter is intended to protect the insurance company from a waiver of defenses, but does not fulfill its obligation to provide a timely coverage determination. Respond to the reservation of rights with a demand for a detailed and specific coverage determination, reminding the insurer that its failure to do so may constitute bad faith.

Also, demand payment of the undisputed amount of each element of the claim. For example, a dispute over the period of restoration for business interruption coverage should not delay payment for property loss. If the insurance company will not agree to make partial payments, submit partial proofs of loss, which will trigger the deadlines for payment under most states' unfair claims handling statutes.

6. Document Everything That Happens – and Does Not Happen – With the Claim.

The resolution of claims, particularly catastrophe claims, can be slow-tracked by a high turnover among insurance adjusters or just a lack of attention by claims personnel.

Policyholders should not only be persistent in their demands for attention, they should also create a written record of everything that happens with respect to the handling of the claims, including their responsiveness to requests for information and the insurers' delays and lack of responsiveness. The chronology should be presented to the insurer in writing on an ongoing basis to deter dilatory conduct and to make a record for a possible bad faith claim later on.

7. Appraisal or Litigation.

If the claim cannot be resolved through negotiation, you may have a choice of proceeding either to appraisal or litigation. Appraisal is a form of arbitration provided for under many insurance policies that either party can demand to resolve disputes over the amount of the loss. It can be a quick and inexpensive way to quantify the claim. However, appraisal is not required, and may not be appropriate, when there are coverage issues to be resolved. For example, if the parties disagree over the amount of a business interruption loss because of a dispute over whether market conditions after the hurricane should be considered when calculating damages, the policyholder would be entitled to have that coverage issue decided in court. Appraisers, who typically are in the building trades, generally are not qualified to address such issues. Also, bad faith claims fall outside the scope of an appraisal clause and will have much greater value if placed before a jury. So, the policyholder must carefully

consider its options and not necessarily feel compelled to agree to an appraisal simply because the amount of damages is one issue in dispute.

The key to getting insurance claims satisfactorily resolved within a reasonable period of time is for policyholders to take control of the process and to demonstrate a resolve to secure the coverage they paid for. This requires hard work, but it will pay handsome dividends.

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