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ALERT

Obtaining Full Coverage for Your Hurricane Sandy Insurance Claim: Eight Basic Tips

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As businesses assess the damage and try to recover from the massive disruptions caused by Hurricane Sandy, many are already thinking about how their insurance contracts respond. Savvy policyholders are already taking action to make sure that they obtain a full recovery under their property and flood insurance policies — most of which cover not only the cost to repair physical damage, but also the profits lost due to the local and regional disruptions wrought by Sandy. Although picking up the pieces after this massive storm will be challenging, this article provides essential tips to help business policyholders maximize their Sandy-related insurance claims.

1. Look to First-Party Insurance

Most businesses affected by Hurricane Sandy will look to first-party insurance policies for recovery. First-party insurance protects policyholders from losses they suffer to their own property as well as expectations of profit. These policies are often called “property” insurance policies, but first-party insurance can come in other forms, including “inland marine,” “fire,” “boiler and machinery,” “equipment breakdown” or “multiperil” policies. Of course, flood insurance obviously is another important type of first-party coverage, especially for policyholders situated near waterways that experienced storm surge during the storm. These policies and their sometimes misleading names, conditions and coverage, can create confusion and potentially cause policyholders to ignore areas of coverage that might be applicable. Therefore, regardless of name, review all of your insurance policies for potential avenues of coverage.

2. Property Insurance Policies: Looking Beyond The “Bricks & Sticks”

Most policyholders recognize that property insurance policies pay for physical loss or damage to buildings and business property — machinery, equipment, inventory, raw materials — as well as the property of others in the policyholder’s control. However, property insurance policies may also include additional coverage beyond physical losses. Although property damage is common following a hurricane, often the most significant losses come in the form of lost revenue and intangible monetary losses.

Most commercial policyholders have coverage under their property insurance policies for such “business interruption” losses, which usually are measured as the lost revenues less non-continuing expenses during

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the loss period following the storm. Most commercial property insurance policies also cover extra expenses incurred due to the storm or to minimize the policyholder's business interruption loss.

Further still, many commercial property insurance policies also cover lost profits caused by, among other things: orders of civil authority (e.g., evacuations or mass transit closures) that limit access to the policyholder's business; damage to other businesses (e.g., casinos) that attract customers to the policyholder's business; or damage to property of customers or suppliers that adversely impact the policyholder's business.

Ultimately, policyholders should look beyond the direct physical damage to property and equipment and determine what additional coverages can be tapped to maximize recovery for the full range of their losses.

3. Retain an Engineer or Consultant if There is Risk to the Structural Integrity of a Property Owned or Managed by the Policyholder

Policyholders concerned that Hurricane Sandy has affected the structural integrity of the property they own or manage may want to consider speaking with an engineer or other consultant to help determine whether steps should be taken to preserve the structural integrity of that property. First-party property insurance policies generally require insurance companies to pay for measures that policyholders take to mitigate damages, including the cost of an engineer or consultant to recommend or help implement measures designed to mitigate damages as well as the actual cost of structural supports.

4. Provide Notice to Your Insurance Companies

A policyholder that believes it has a potential claim should give notice to all of its insurance companies as soon as possible. In some states, late notice can create unnecessary obstacles to an otherwise straightforward claim. While the rules determining the extent of an insurance company's right to deny coverage on the basis of late notice vary from state to state, policyholders can avoid the danger by providing timely notice. This is one situation in which it is best to err on the side of caution. Provide notice even if you do not have a complete handle on all the particulars of a claim — you can always supplement the initial claim later as you develop more complete information about your losses. In most, if not all, cases, it may be preferable for the policyholder to instruct its insurance broker to give notice under all insurance policies that could be implicated. Finally, be mindful that your insurance policy may dictate that notice be provided in a particular way, including on a specific form, by a specific individual, and to a specific individual. Again, err on the side of caution and make an effort to follow the notice requirements to the "T."

5. Document All Loss Items and Emergency Expenses

Policyholders should put into writing all claim-related submissions, information and communications with the insurance company.



Insurance companies often question, reject and contest loss items submitted by policyholders for reimbursement. Keeping complete and accurate records of loss items is vital to getting fully reimbursed for your losses. In addition, consider using video and photographic evidence to further document losses.

The claims resolution process can be lengthy and tedious. Be prepared for multiple requests for the same documentation and information. If such repeated requests bog down your claim, be aware that they can also be a sign of bad faith conduct by the insurance company. Maintaining a complete written record of your communications with the insurance company can be helpful not only in processing the claim itself, but also in any subsequent litigation that may follow.

6. Consider Tolling Agreements With Your Insurance Company

Large property and business interruption losses like those caused by Sandy may well result in insurance claims that sometimes take months if not years to resolve. However, insurance policies sometimes require a policyholder to repair or replace property, file a proof of loss and/or file a lawsuit within a relatively short period of time — sometimes even if the insurance company has not completed its adjustment of the loss. Provisions limiting the time for the policyholder to provide a “proof of loss,” file suit and/or repair or replace damaged property, can be and often are extended by written agreement between the policyholder and insurance company. That written agreement is referred to as a “tolling agreement,” which provides a “time out” and keeps the clock from running out on the policyholder. Accordingly, policyholders should consider whether the nature of the loss and the specific policy provisions warrant a tolling agreement.

7. Assemble the Right Team to Prepare and Pursue Your Insurance Claim

Given the substantial damage wrought by Hurricane Sandy, the insurance industry is sure to enlist an army of consultants and attorneys to evaluate Sandy-related claims. Although they are called “independent adjusters,” the personnel that insurance companies send out to process claims work for the insurance company, not the policyholder.

Policyholders, especially those with significant losses, should make sure they have the right team working for them and protecting their interests.

A policyholder’s internal claim team should be identified early, and the responsibilities and roles of each team member should be defined as soon as possible. Moreover, the internal claim team should have “one voice” in communications with the insurance company in order to avoid inconsistencies in the information provided to the insurance company.

Policyholders should also look to various external resources in connection with the preparation and pursuit of claims. Forensic accountants, public adjusters and insurance coverage counsel all can provide valuable services to policyholders, particularly with regard to large claims and claims requiring detailed policy analysis or claim preparation.

8. Appreciate Exclusions for What They Are and What They Are Not

Policyholders should pay particular attention to any water damage or “flood exclusions” contained in their policies. These exclusions can become a grey area as large as the storm itself, as insurance companies often attempt to use these provisions to exclude otherwise covered losses. For example, although damages occurring from the overflow of coastlines and rivers may be excluded as flood, rain that washes away land and causes a collapse may not constitute “flooding” and those losses are not excluded. There is no bright line rule as to whether a flood exclusion applies and it will vary depending on the unique facts of each loss and policyholders should not automatically assume, or accept, that the mere involvement of water will exclude their loss. Of course, coverage for damage directly



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caused by actual flooding should be covered under the policyholder's flood insurance policies.

The physical cleanup and economic recovery following Hurricane Sandy will take months if not years to complete. Although some aspects of the recovery are not within the control of those impacted by the storm's devastation, the resolu-

tion of insurance claims need not be entirely out of the policyholder's hands. By following these tips and remaining resolute in the pursuit of their claims, commercial policyholders can efficiently and effectively obtain full recovery for their hurricane-related losses and return to business as usual.▲

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