

Ensuring Insurance Recovery After a Hurricane Loss

by Finley Harckham and Joshua Gold

Weather experts reported recently that fewer hurricanes are likely to develop this season. But as most meteorologists will also tell you, it only takes one hurricane to make the season a catastrophe. Storms have increased in intensity in recent years, and most climate scientists believe that global warming will cause increasingly severe disruptions. Whether striking at the heart of the eastern seaboard or the gulf coast, recent storms and hurricanes are a painful reminder of how much death, destruction and havoc severe weather events can wreak on people and businesses alike.

Given this reality, reliable insurance protection is essential. What is also essential, as insurance policy terms and fine print are rarely policyholder-friendly, is dealing smartly and cautiously with your insurance company. Businesses will have to be proactive and vigilant if they are to successfully resolve their insurance claims. The following tips can greatly enhance their chances of success.

1. BE PROACTIVE IN PRESENTING THE CLAIM.

Provide the insurance adjuster with all relevant information about your loss without waiting to be asked. 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 INSURANCE COMPANY A REASONABLE DEADLINE FOR RESOLVING THE CLAIM.

Even 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 certain date. 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 (including those providing time-element insurance coverage) impose a number of requirements upon the policyholder, including notice clauses 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 your insurance company arguing for a complete forfeiture of coverage. So, be sure to comply with these requirements or obtain the written agreement of the insurance company to adjourn deadlines to avoid prolonged legal skirmishes over these points.

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 insurance company with only internal 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 if it seems the insurance company is looking to avoid coverage in part or whole.

5. DEMAND PARTIAL PAYMENTS.

Typically, the insurance company 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 insurance company to hold onto funds that should be paid out for undisputed 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, insurance com-

panies confront policyholders with 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, emphasizing that a 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 damage. 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 own responsiveness to requests for information and the insurance company's delays and lack of responsiveness. The chronology should be presented to the insurance company in writing on an ongoing basis to deter dilatory conduct and to make a record for a possible bad faith claim later on.

7. CONSIDER 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 can pay handsome dividends. ■

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