INSURANCE COVERAGE CONSIDERATIONS FOR HURRICANE FLORENCE LOSSES

Businesses Should Prepare Now to Seek Insurance Coverage for the Anticipated Losses

By Daniel J. Healy, Partner, Anderson Kill, LLP

Hurricane Florence has made landfall. Many businesses already have taken significant measures to protect their property from the storm. Yet many businesses can be expected to suffer property damage, interruptions in their business and incur costs to repair and replace assets. It may take a long time for many businesses to fully recover. Insurance coverage is often vital in these circumstances and can make the difference for many businesses.

The following tips outline steps every business should consider in assessing their available insurance coverage, pursuing coverage for their losses and – perhaps most importantly—getting their claim paid.

IMMEDIATE STEPS TO TAKE

1. ***Review and organize your policies.***

Identify all of the policies that your business has purchased, not just your property policies (although those are likely the most important). If you do not already have a system to locate and identify current coverages, act now to document your company's insurance portfolio. If you do not have copies of policies, request them from your broker or insurance company. While doing so can be difficult with the hurricane at hand, turning to this step afterward only creates further delay, uncertainty and complications, not to mention stress.

2. ***Give Notice.***

Notice of claims, even potential claims, should be provided quickly. Policyholders should consider which policies may apply to a potential claim and provide notice under each policy that may potentially respond. Notice of hurricane-related losses can be provided quickly and supplemented with further details as facts become known. Providing notice quickly can avoid pitfalls and start a productive conversation toward obtaining full coverage.

3. ***Assemble a team.***

Corporate policyholders generally need to involve personnel from different departments and outside personnel to address losses and insurance claims. In-house counsel, risk managers and key executives intuitively make the team, but others likely will be needed. Persons with knowledge of operations, facilities and revenue/cash flow should be involved. Outside consultants may be needed to help investigate and document the losses.

4. ***Estimate or quantify the losses.***

As early in the process as possible, track monetary losses, including funds spent, potential business interruption, the costs to repair or replace damaged property and related losses. Stick to the approach and numbers you use and do not let insurance companies arbitrarily re-label the categorization of your losses and expenses. Attention should be paid to policy language and, potentially, case law, in order to avoid limiting coverage unnecessarily.

The foregoing steps will help set a process for moving forward with a plan to pursue recovery for losses. That process may still be stressful, but identifying applicable coverage early in the process will help categorize losses and the applicable insurance coverage. Knowing the extent of coverage for losses helps provide clarity and support to the process of resuming full business operations as quickly as possible.

SUBSTANTIVE COVERAGE CONSIDERATIONS

Do not assume you have no coverage just because you may lack flood coverage. Many provisions within just a property insurance policy may respond to losses from Hurricane Florence. There are a number of types of coverage that businesses should consider. The following are some of the most common to consider in the wake of Hurricane Florence.

"Flood," "storm surge," "named storms," wind and wind-driven rain may all be separately defined perils that have full, sub-limited or no coverage. How each policy defines these key terms can be critical in determining the extent of coverage. Policies should be reviewed carefully to determine the coverage available for each and how any sublimit functions and interacts with other coverage provisions and sublimits. Remember that damage may be from wind or rain or storm surge or floodwater. Avoid boxing yourself into a causation argument until you have the facts.[1]

Business interruption coverage applies to losses in income stemming from disruptions of operations that arise from property damage and provides coverage beyond the repair and replacement costs. In addition to coverage for lost income from damage to the policyholder's own property, this coverage also may be triggered by circumstances including utility service interruption, a government evacuation order or a substantial impairment of access to premises. "Extended" business interruption coverage can begin when damaged property is fully repaired and cover the period of time until operations actually reach pre-disaster level, but may have arbitrary time limits built into the provision.

Contingent business interruption coverage is triggered when policyholders lose revenue after a property loss impacts one or more suppliers or customers. For example, businesses that rely upon specialty parts from a supplier in the affected region may have not be able to get parts, or may have to pay more to obtain them elsewhere. Similarly, businesses that sell products or services into the affected region will suffer lost sales. A business suffering such losses, while itself not physically damaged, may have coverage for its losses from the damage that affected its suppliers, business partners or customers. This coverage can be complicated, but should not be ignored.

Extra expense coverage applies to additional costs incurred by the policyholder as a result of damage to its property, and to costs incurred to mitigate economic losses. This coverage often is very broadly defined. Many businesses recovered considerably with this coverage after Hurricane Harvey.

Contingent extra expense coverage applies when costs are incurred as a result of a business interruption caused by damage to the property of a supplier or customer. This coverage may be limited to expenses to avoid a contingent business interruption loss, but such coverage will be important for some businesses..

Ingress/Egress coverage often applies to losses from your inability to access property that was not damaged but that a business is prevented from accessing due to damage to other property or because of other, unpreventable reasons.

DICC and Law/Ordinance coverage applies to the costs of replacing not only the property that was damaged, but portions of that property that were undamaged and are required to be replaced to meet legal requirements.

Adjuster/Professional Fee coverage often covers the costs spent to prepare and submit an insurance claim.

---

[1] For policyholders lacking flood coverage, insurance companies often invoke "anti-concurrent causation clauses" to deny any coverage at all if flooding occurred. Some state courts, however, have held that if the "efficient proximate cause" of damage is covered, the anti-concurrent causation clause does into bar coverage. Additionally, it may be that the controlling law is where the insurance policy was delivered and not always where the damaged property sits.