

5 Tips For Policyholders To Clean Up After Winter Storms

By **Jeff Sistrunk**

Law360, New York (January 27, 2015, 8:52 PM ET) -- A powerful winter storm hammered New England and other parts of the Northeast with heavy snow and whipping winds beginning on Monday, leaving some companies vulnerable to losses from repair and replacement costs and business interruption.

Here, attorneys share tips for policyholders to secure the maximum possible recovery for storm-related losses.

Check Your Coverages and Give Notice

As businesses begin to dig out from the storm, they should carefully parse all their insurance policies to determine which of their losses may be covered and promptly give notice under any potentially applicable policy, according to attorneys.

"Language can vary from policy to policy, and it is important to review the scope and amount of coverage that your policies provide," said Erica Dominitz, an insurance recovery partner at Kilpatrick Townsend & Stockton LLP.

In addition to property damage and business interruption coverage, many property policies also include a slew of other coverages, attorneys say.

Debris removal coverage covers the cost of cleaning up storm-caused debris. Extra expense coverage covers increased costs for a business to continue operations while it is still repairing or replacing damaged property — for example, the cost of temporarily moving business operations to other facilities. And expediting expense coverage covers increased costs to expedite repairs, such as overnight shipping costs and overtime charges, Dominitz explained.

Policyholders should also check to see if they have coverage for ingress or egress to an insured property, said Finley Harckham, a senior litigation shareholder at Anderson Kill. He pointed out that the winter storm prompted multiple executive orders closing down highways, subways and other mass transit.

"If companies lose business because customers can't get to them, or they can't get products or services out, they should look at whether they have coverage for losses from an order of civil authority or access/egress to property," he said. "For these coverages you do not have to have suffered damage to your own property, but there must be damage to third party property."

A common misperception is that a business can't make a business interruption claim unless it suffers damage to property it owns, according to Reed Smith LLP partner Rich Lewis.

"However, a lessor can make a BI claim," Lewis said. "If property the business uses to earn money is damaged or destroyed and that affects a lessor's ability to earn income, they can make a claim. If you are using property to operate your business and would suffer economic damage in the event of a catastrophe, you have a sufficient insurable interest in the property."

Assemble a Team

Business insurance policyholders should bring in experts, such as forensic accountants, engineers and architects, early in the process to help them assess losses and prepare their claims, according to attorneys.

"It's important in the beginning to put a team in place to develop a game plan for pursuing your claim," Harckham said.

Having a forensic accountant on board who is well-versed in the relevant coverages and in negotiating with insurance carriers can help smooth the recovery process, attorneys say.

"Even if you're a business-savvy person and have some accounting training, if you don't know how these claims are adjusted, you can get abused in the claims handling process," Lewis said.

Dominitz noted that property policies typically include professional fees coverage or loss adjustment expense coverage that covers fees charged by certain experts.

"It really is a no-brainer," Dominitz said.

Document Losses and Know Your Burden

It is crucial for policyholders to quantify and document their losses and keep proof of all their expenses, including costs for any measures they took to avoid or minimize damage prior to the winter storm, according to attorneys.

But they should also be aware of the burden and method of proof to demonstrate the amount of a covered loss, attorneys say.

While some insurers may request information "going back to when your business started ... you just have to give them a reasonable amount of information," Lewis said.

"Case law says you can prove loss in any number of ways — with a policyholder saying what they earned, books, tax returns, the testimony of employees and so forth," Lewis said. "Don't let insurers say you haven't given enough information to prove your loss. That's for the court to determine."

Cooperate With Your Insurer

Businesses should be sure to keep their insurance carriers in the loop when replacing or repairing damaged property, and should also keep them apprised of other important loss-related developments,

Dominitz said.

Cooperation clauses in policies typically require insureds to provide such information to their carriers, she noted.

"Also, disputes tend to be avoided, or at least less protracted, when you keep your carriers apprised of, and give them an opportunity to provide input regarding, repair/replace and other important decisions before you actually commit the funds," Dominitz said.

Policyholders should document all communications with their insurers regarding these developments, Dominitz added.

Communicate Carefully

Policyholders should be cautious when communicating with others about a loss, according to attorneys.

"After a company or individual has suffered a loss, people tend to communicate with many people — internal personnel and third parties — and often do so hastily, particularly when communicating by email," Dominitz said.

It is important for a policyholder to know "what communications are likely to be deemed privileged and, more importantly, which ones are not likely to be deemed privileged," according to Dominitz.

"Also, it is best to limit communications to objective facts and to avoid speculation and legal conclusions," she said.

--Editing by Kat Laskowski and Chris Yates.