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ALERT

GOODNIGHT, IRENE Tips for Effectively Putting Hurricane-Related Insurance Claims to Rest

By Darin J. McMullen and Pamela D. Hans

News stories in the immediate aftermath of Hurricane Irene stressed that the damage wrought by the storm was not as bad as feared. While we can all be thankful for that, it is also true that thousands of businesses and homes up and down the eastern seaboard sustained physical damage and business interruption losses. Early estimates placed property damage and commercial losses in the neighborhood of \$7 billion. Many businesses will therefore be looking to their insurance companies to recover the myriad losses from the storm. Although picking up the pieces after Irene will be challenging, this article provides essential tips to help business policyholders maximize their Irene-related insurance claims.

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1. Look to First-Party Insurance

Most businesses affected by Hurricane Irene 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. 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





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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.

An additional coverage often found in property policies is business income coverage, which typically insures the policyholder's loss of net revenue after expenses and the policyholder's continuing expenses during the loss period. A policy may also insure extra expenses. Extra expense coverage generally insures the policyholder's costs in minimizing or avoiding a business income loss or avoiding further property damage. Policyholders should look beyond 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 Irene 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 the policyholder takes 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 be fatal to an otherwise valid 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 that 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. Because providing notice to a broker does not always constitute notice to the insurance company, request that your broker provide a copy of each notice letter sent to an insurance company.

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 follow the notice requirements to a T.



5. Document All Loss Items and Emergency Expenses

Policyholders should put into writing all claim-related submissions, information and communications with an 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. Emergency Repairs and Preservation of Property

In some cases, emergency efforts may be coordinated and performed by governmental agencies and officials. If you are prevented from operating because of government orders that restrict access (sometimes referred to as “civil authority”), your first-party property insurance policy, particularly the business income coverage, may allow you to recover for lost business income during the time that you are prevented from operating.

7. Consider Tolling Agreements With Your Insurance Company

Property and business interruption losses of the magnitude of those caused by Irene may well result in claims processes that 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.

8. Utilize All Available Resources in Submitting and Pursuing Claim

Given the substantial damage wrought by Hurricane Irene, the insurance industry is sure to enlist an army of consultants and attorneys to evaluate Irene-related claims. Policyholders, especially those with significant losses, should likewise consider marshaling all available internal and external resources in submitting and pursuing their insurance claims.

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, engineers, loss adjusters and coverage counsel can all provide valuable services to policyholders, particularly with regard to large claims and claims requiring detailed policy analysis or claim preparation.

9. 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 gray 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 rivers and lakes 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.



The physical cleanup and economic recovery following Hurricane Irene will take months if not years to complete. Although some aspects of the recovery are not in the control of those impacted by the storm's devastation, the resolution 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 seek recovery for their hurricane-related losses and return to business as usual. ▲

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