

Practical Tips for Insurance Recoveries After Storms

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Insurance Recovery

Hurricane Irma has battered much of Florida, Puerto Rico and the Caribbean, just days after tropical storm Harvey devastated Houston and its environs. This e-alert provides practical tips to help maximize insurance recoveries for those organizations whose property was damaged or whose business was interrupted by these catastrophic events.

Know what is covered. Storm losses include property damage, loss of earnings from a slowdown or suspension of operations, extra expense (such as temporary quarters) to continue normal operations. They also include “contingent” business interruption losses due to problems suffered by customers, suppliers, or utility providers. The scope of available coverage is not always obvious. Investigate potential coverage for losses even if coverage is not apparent.

Communicate promptly. From the outset, maintain communication with insurers, adjusters, and brokers. Because these early communications can set helpful—or unhelpful—precedents, make sure those communications are well-coordinated to avoid factual admissions that could undercut your insurance claims. Document communications to avoid future disputes about what was said.

Have the right insurance recovery team. In-house teams organized to seek recovery for major storm claims should include lawyers from the general counsel’s office. Counsel should review the language of the relevant insurance policies to assess the scope and amount of coverage. Thoughtful legal analysis of the coverage terms should guide any investigation and quantification of the causes, nature, and scope of any losses. That investigation should include operational, finance and accounting personnel. Companies with significant disaster-related losses should devote the same diligence to insurance recovery that they would to any other project of a similar size.

Beware of coverage-limiting assumptions in the adjustment process. Even if an insurer acknowledges that some coverage is available, it may take a narrow view of the amount of the loss. For example, claims adjusters may point to pre-existing damage even when that damage should not reduce the amount of the claim under “replacement cost” policies. Unwary policyholders may accept faulty assumptions without realizing that those assumptions are inconsistent with their policies. Policyholders who adopt or fail to correct their insurers’ faulty premises may unnecessarily reduce their recoveries.

Key issues. Examples of key insurance issues requiring careful attention include:

- Whether losses fall within specific retentions and sub-limits, such as those for a “Named Windstorm”;

- Whether wind or flood exclusions may be avoided under the particular factual circumstances or under the particular applicable state law;
- Whether government grants or aid offset insurance claims;
- Whether damage to direct or indirect customers or suppliers triggers “contingent” business interruption coverage;
- Whether “Services Interruption/Off Premises Power” coverage is triggered;
- The appropriate method for computing lost earnings or extra expenses; and
- Whether lost earnings should reflect seasonal or general economic trends.

Covington can provide valuable insight as part of any insurance recovery team. Our lawyers can review insurance policies to identify additional sources of potential coverage, or hidden traps; formulate strategies for maximizing insurance recovery; serve as a sounding board for the in-house teams; or assist with claim presentation and other insurance recovery efforts so that company personnel can focus on ongoing business. We stand ready to help with your Harvey- and Irma-related claims or other insurance recovery matters.

Overview of Covington’s First-Party Insurance Practice

With Covington’s assistance, clients have recovered billions of dollars in insurance for property damage, business interruption and contingent business interruption losses. Covington has the top-ranked policyholder practice in the U.S. according to *Chambers USA, Legal 500* and other law firm rating guides. We help policyholders maximize insurance recoveries under a variety of “first party” coverages, including coverages for business interruption, contingent business interruption, property damage, and extra expense, among others. Covington’s Insurance Practice Group has assisted or currently assists clients with claims arising from such natural disasters as Harvey, Sandy, Katrina, Rita and Frances. Our record of maximizing insurance recoveries—through negotiation, arbitration, and litigation—spans more than 35 years, and Chambers has described us as setting “the ‘gold standard’ for policyholder work.”

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Insurance Recovery practice:

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