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Insurance Coverage for Lost Income Due to Supply or Manufacturing Problems in Puerto Rico

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Insurance Recovery

Last month, Hurricanes Irma and Maria battered Puerto Rico, which is a major center of pharmaceutical manufacturing. Damage there to property, roads, bridges, communications, power, and water systems may take months or more to repair. Some, including the FDA, have expressed concern that the damage could lead to shortages of important drugs, medical devices, and supplies. Manufacturers both inside and outside Puerto Rico may have to contend with serious supply-chain disruptions. These disruptions could result in substantial losses to businesses with supply chains that pass directly or indirectly through Puerto Rico.

Commercial property insurance policies typically provide a variety of coverages that may help protect policyholders from these losses. Most policyholders know that commercial property policies cover business interruption losses and extra expenses. That is, the policies cover losses in earning because physical damage causes a slowdown or suspension of operations. They also cover increased operating expenses tied to the damage. But some observers may not appreciate that property insurance policies often also cover:

- Losses resulting from damage to suppliers (or customers);
- Losses resulting from damage to service providers;
- Loss resulting from an inability to access otherwise undamaged locations; and
- Losses resulting from government orders that prohibit access to insured locations.

Losses from Damages to Property of the Policyholder's Customers or Suppliers

Many policies cover "contingent business interruption" losses. That coverage often includes losses that result from property damage to an insured's *supplier* that in turn limits the insured's ability to purchase supplies or conduct operations. These policies also often cover losses resulting from property damage to customers that prevents them from buying or accepting the insured's products. Depending on the policy language, contingent business interruption coverage may extend to indirect suppliers and customers.

The *Archer-Daniels* case illustrates how extensive this coverage may be. After flooding of the Mississippi River damaged grain crops, Archer-Daniels recovered for its disrupted business. Significantly, it had no direct dealings with damaged individual farmers but purchased grain through a central dealer. The court found that the "indirect" linkage between Archer-Daniels and the damaged individual farmers triggered coverage. Archer-Daniels also recovered losses related to the increased cost of transportation after barge traffic on the Mississippi halted. The court found that the Army Corps of Engineers (which maintained the River's operations) "supplied" transportation services.

Businesses—including pharmaceutical companies and medical device manufacturers—that obtain supplies directly or indirectly from Puerto Rico should look carefully at their policies. Policies may cover losses resulting from the damage to suppliers on the island. Businesses that ship into and out of Puerto Rico likewise may have coverage for increased transportation costs resulting from shut downs at ports and diesel fuel shortages. And businesses that sell to Puerto Rico-based customers should carefully examine their potential coverage for lost sales.

Other Potentially Relevant Coverages That Policyholders Should Keep in Mind

- Service Interruption: According to reports, one of the biggest challenges facing many Puerto Rico-based manufacturers is the instability of the electric grid. Many policies cover business interruption loss resulting from the disruption of utility services—including power and internet—to an insured's property.
- Ingress/Egress: Numerous road closures continue to affect areas of Puerto Rico. Losses that results from a policyholder's inability to access its property as a result of physical damage near the property may likewise be covered. Policyholders should consider whether their policies cover shipping problems, employee transportation problems, or damaged roads that prevent or restrict access to a factory.
- Civil Authority: Many roads or factories may be closed due to government orders as a matter of public safety. Many policies cover business interruption losses sustained when a governmental authority prohibits or impairs access to an insured premises—for instance, if local authorities shut down access to roads.

Practical Tips for Post-Loss Recovery

Policyholders should look carefully at the insurance policies that they bought to ensure that they are maximizing their recovery. In addition, they should follow these basic practices:

- Continue any post-hurricane mitigation efforts, using good common sense to make reasonable decisions;
- Document communications with insurers; and
- Keep track of and adhere to notice and proof-of-loss deadlines (and seek an extension in writing if needed).

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