

Can Your Insurance Weather The Coming Storms?

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The Atlantic tropical storm season is hitting its annual peak. In a dire warning issued on Aug. 9, the federal government’s lead hurricane forecaster stated that the coming months will be “extremely active.” His projection is premised on the fact that the number of storms formed this year is already running three times higher than normal. Hurricane Harvey, which was building in the Gulf of Mexico at press time, is the latest in this deadly line.

As storms like Harvey continue to stir, corporate policyholders must focus on their insurance programs. There are a number of lines that could cover losses caused by catastrophic weather. These include commercial general liability, marine cargo and inland marine, to name a few. But the most likely to respond is first party property coverage, commonly referred to as the “all risk” policy.

Here are six quick steps that every corporate policyholder should take to maximize its insurance recoveries in the wake of a major weather event.

Step One: Review, Understand and Renegotiate Your Insurance Policies. The devil is in the details when it comes to insurance contracts. Consequently, to be truly prepared for a catastrophic event, it is essential for corporate policyholders to familiarize themselves with the coverage they have purchased. Most policyholders know that first party property policies cover damage to a company’s physical plant. But the typical policy goes well beyond that, as it routinely includes coverage for business interruption (including losses caused by damage to key suppliers), loss mitigation, extra expenses, debris removal, blocked access to company facilities and even pre-storm preparations.

It is equally important for policyholders to understand what their insurance contracts do not cover. By way of illustration, many all-risk policies exclude coverage for damage related to flooding and “storm surge.” As a result, even a policy which purports to cover hurricane-related losses may, according to insurers, exclude losses taking the form of rising water. Similarly, first-party property policies often contain “anti-concurrent causation” provisions, which are specifically designed to broaden the reach of policy exclusions. Insurers often urge that, if multiple causes contribute to a given loss — and one such cause is excluded from coverage — the entire loss is excluded by virtue of such a provision. That means in a hurricane scenario,



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if wind-related damage is covered and storm surge is excluded, an insurer may deny in its entirety any loss resulting from a combination of wind and rising water.

Once a hurricane is on the horizon, it is too late to renegotiate your coverage. Thus, it is essential that policyholders identify — and patch — coverage gaps well in advance of a potential weather event.

Step Two: Establish a Disaster Preparedness Plan. Comprehensive contingency plans are essential tools for maximizing subsequent insurance recoveries. Such plans should include contact information for all personnel, detailed inventories of all property, a list of key suppliers, and up-to-date insurance policy files. Best practices also call for the establishment of a disaster response team. Ideally, that team should be comprised of company leadership, risk management personnel, outside insurance brokers, insurance coverage counsel and forensic accounting experts. It is the combined expertise of these individuals that will ultimately ensure no available insurance dollars slip through the cracks.

Step Three: Proactively Protect Your Property. When a hurricane is bearing down, it is essential to be proactive. Boarding up windows and doors is a good first step, but it is not enough. Wherever possible, corporate policyholders should also relocate portable equipment and stock — ideally outside of the storm's path, but, at the very least, to higher ground. Taking such steps will hedge against an insurance carrier's later attempts to invoke the rising water and anti-concurrent causation exclusions.

Step Four: Promptly Notify Your Insurance Carriers. It is essential to give timely notice of claims. Many policies contain specific instructions regarding how and when notice should be delivered. Unfortunately, the chaos which inevitably follows a catastrophic event can trip up even the most conscientious policyholder. When steps are missed, insurance dollars may be lost. To avoid this situation, the disaster preparedness plan should pre-assign to a specific individual — one who is fully familiar with the applicable policy — the responsibility for tendering notice. Such an arrangement will ensure that the insurance claim is quickly and correctly initiated as soon as the storm clouds clear.

Step Five: Carefully Document Your Losses. A thorough accounting of physical damage and resulting economic losses is an essential prerequisite to the maximization of insurance recoveries. Here again, a keen understanding of the governing policy is crucial, because a failure to comprehend the scope of applicable coverage could guarantee that insurance proceeds are left on the table.

Step Six: Rely On Insurance Professionals. As evidenced by the foregoing steps, mistakes made in the immediate aftermath of a storm can severely undercut the ultimate insurance recovery. For that reason, it is critical for corporate policyholders to enlist the aid of insurance professionals from the very outset. Coverage counsel and forensic accountants are highly specialized practitioners who understand applicable policy provisions and know how to comprehensively document a given loss. Insurance carriers rely heavily on such experts in dealing with catastrophic claims. It is absolutely essential for policyholders to do the same.

This fall marks the fifth anniversary of Superstorm Sandy, and many businesses are still feeling the residual effects. That fact, coupled with the dire warnings regarding the current hurricane season, should raise an alarm at companies of all shapes and sizes. Hoping for the best is not a viable plan. Instead, corporate policyholders must act now to ensure that their insurance coverage can weather the coming storms.

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