Insurance Recovery Group

Client Resource Guide

Ten Tips to Preserve First-Party Coverage for Losses Arising from a Hurricane

November 2022

ReedSmith

Driving progress
through partnership

Ten tips to preserve first-party coverage for losses arising from a hurricane

After a major hurricane, when people move from the press of survival and immediate recovery to rebuilding, insurance plays a critical part. In particular, “first party” or “property” insurance – covering policyholders for the property they own, rent or operate along with the income they lost and associated expenses – may help companies whose operations were damaged and dislocated by a hurricane.

In general, property insurance is designed to pay for the cost to repair, the actual cash value, or the replacement cost, of damaged buildings or equipment. Frequently, a property insurance policy contains business income coverage, designed to pay a policyholder its lost profit and continuing unavoidable expenses when the policyholder’s operations are disrupted by damage to property at the place of those operations. It can help supplement a business' income if the business can't operate due to a covered loss. Extensions in common use also cover losses of income when property critical to the policyholder’s operations is not damaged, but the policyholder’s operations are nonetheless affected.

These tips are intended to assist policyholders affected by a hurricane in preserving their right to property, including business income coverage.

---

1. Be prepared for a challenge

Property coverage disputes between insurance companies and their policyholders tend to be about the amount of coverage; *e.g.,* how much will it cost to repair damaged machinery or how much profit did the policyholder expect during the months the storm knocked it out of operations. Insurance companies will often have much more conservative estimates of the cost to repair property or the performance of the policyholder during the relevant period. Further, after a major hurricane, where thousands of businesses will present claims, insurance companies will be under pressure to avoid taking positions that could open them up to greater obligations to other policyholders. Accordingly, although plenty of policyholders will be satisfied with their insurance recoveries, you must press your claim as if there will be a dispute for which you will need reliable evidence: keep accurate records, record insurance company positions, provide requested information, etc.

A good rule of thumb, throughout the claims process, is to treat every interaction with the insurance company as if you may have to prove it in court. This not only prepares you for the worst, but it also shows the insurance company you are serious about your claim.

2. Locate the applicable policies

Policyholders seeking coverage for loss or damage from a hurricane will look to first-party insurance policies, or policies that promise to protect policyholders from losses they suffer to their own property or expectations of profit. As noted above, these are typically “property” policies, but they come under other names, like “inland marine,” “fire,” “multi-peril,” “package” or “business owner’s” insurance. Accordingly, review all of your insurance policies for potential coverage. Further, if you lost your policies, either before or because of the hurricane, you should seek copies from your broker, agent and insurance company.

3. Read the policy

Property insurance policies typically are bulky, and their wordings and coverages are complex, but property insurance is not quantum physics. A close reading of your policies will probably reveal most of the provisions under which coverage may exist, and form a basis for intelligent discussion with your broker or insurance company.

Property insurance policies typically contain three basic types of coverage: Property damage, business income and extra expense.

Property damage coverage is designed to pay for physical loss or damage to buildings and business property – machinery, equipment, inventory, raw materials – as well as property of others in the policyholder’s control.

Business income coverage is designed to pay for the policyholder’s loss of profit, and the policyholder’s unavoidable continuing expenses (for instance, insurance premiums, salaries of management and often ordinary payroll, but not raw materials because they are not needed by an inactive operation) during the period in which the policyholder is out of business because of damage to property necessary for the policyholder to conduct operations.

Extra expense coverage pays for both the policyholder's costs in minimizing or avoiding a business income loss (for instance, costs incurred in relocating temporarily) and, depending upon the form, those costs the policyholder would not have incurred but for the loss (for instance, security guards to prevent looting).

Businesses that suffered business losses from a hurricane unrelated to any physical damage to their property may still have coverage under property insurance policies.

The first coverage to examine is *contingent business income* coverage, designed to cover a policyholder for loss of business income caused by damage to or destruction of property owned by others (typically, suppliers or customers). An example of such coverage would be that which was purchased by a car maker to protect it if its sole supplier of transmissions suffers destruction of its factory, and the car maker suffers a business income loss from its inability to complete manufacture of cars. Accordingly, a business which had an intimate business relationship with a company impacted by a hurricane may be able to recover for losses suffered in the wake of the destruction of that company's physical plant.

Similarly, businesses can look to *contingent extra expense* coverage to pay for increased costs incurred after the disaster to minimize or avoid a contingent business income loss. Accordingly, if a business incurred additional expenses in order to avoid or minimize a contingent business income loss (for instance, by purchasing supplies from another company at greater cost) it may have coverage for those costs under contingent extra expense coverage.

Some policies may provide *ingress/egress* coverage, designed to cover losses when ingress onto or egress from property is made more difficult or prevented by property damage.

Finally, affected businesses should also look to *service interruption* coverage, designed to provide coverage for business income losses attributable to dislocation of utility or telecommunications service.

4. Provisions specific to named storms and flooding

As a result of historic claims, property insurance policies frequently either exclude losses from named windstorms or floods, or subject those coverages to low sublimits. The case law on these limitations is emerging and complex, and their effect may not be as broad as one might initially believe. For instance, a number of cases have found that sublimits for "damage" from windstorm or flood do not apply to "loss" – including business income "loss." Do not be discouraged from giving notice because of such exclusions or limits.

5. Give notice

Further to point four, give notice as soon as possible. There is no harm in doing so and the failure to do so can be disastrous. Include all known losses and a catchall to cover losses that may be discovered after the fact. Do not wait for complete information; if necessary, provide updates later.

6. Know what you know and don't know

If your claim is large enough, you should consider hiring an adjustor and/or an accounting firm that specializes in business income accounting. The insurance company will almost certainly hire an "independent" adjuster, and, for business income claims, one or more accounting firms that specialize in representing insurance companies. It will also probably hire, and conceal the hiring of, a law firm.

A quick internet search will reveal that there are many firms which understand how property and business income claims have historically been presented and handled, which is a tremendous advantage when dealing with insurance companies. Insurance company adjusters handle thousands of claims at a time, while a policyholder would count itself as unlucky to have more than one serious property claim in a lifetime. Without the assistance of these professionals, even a savvy businessperson may be at a severe disadvantage in negotiating its claim. For instance, many insurance companies took the position after the attacks of September 11 that business income claims for retailers had to be adjusted downward because people in Manhattan were not active consumers in the weeks after those attacks. This sounds reasonable on its face, perhaps, but is wholly contrary to the position the insurance industry had always taken: that business income losses are paid based on expectancies as of the moment before the loss.

7. Quantify the claim

You must properly quantify your claim. You need not do this through any particular type of evidence, but the general rule is the more evidence the better. Again, if your claim is big enough, you should consider hiring an accounting firm that specializes in property insurance coverage accounting. Respond quickly to requests for information and document when and how you did so. As noted above, treat these interactions as if you will have to prove them in court.

8. Be a squeaky wheel

Insurance companies frequently resort to the tactic of rationing by hassle: they deny claims and do all they can to discourage policyholders, finally paying only the persistent policyholders who do not take “no” for an answer. Accordingly, you should do everything in your power to demonstrate to the insurance company that you will not simply go away. For instance, you should write letters and demand information and positions on, and explanations of, coverage. If unanswered, you should write further letters incorporating all previous requests for information and demanding immediate responses.

9. Be aware of policy deadlines

You should be aware of deadlines in the policies. For instance, some policies require that Proofs of Loss be filed within a certain amount of time (often, 60 days). Of more import, most policies require that any suit filed against the insurance company must be filed within a short time (usually, one or two years). If you are in negotiations with the insurance company, you may be able to argue the insurance company waived or is estopped to assert this limit, **but if negotiations are running up against that limit, you should get a written extension of your time to file suit**.

10. Challenge adverse coverage positions

As noted above, insurance companies allocate by hassle, and the squeaky wheel (complaining, letter-writing policyholder) gets the grease (the coverage it purchased).

Key contacts

R. Hugh Lumpkin
Partner
Miami
+1 786 747 0240
hlumpkin@reedsmith.com

Matthew B. Weaver
Partner
Miami
+1 786 747 0241
mweaver@reedsmith.com

Jessica Gopiao
Associate
Miami
+1 786 747 0251
jgopiao@reedsmith.com

Christopher T. Kuleba
Partner
Miami
+1 786 747 0239
ckuleba@reedsmith.com

Reed Smith is a dynamic international law firm, dedicated to helping clients move their businesses forward.

Our long-standing relationships, international outlook, and collaborative structure make us the go-to partner for speedy resolution of complex disputes, transactions, and regulatory matters.

ABU DHABI
ASTANA
ATHENS
AUSTIN
BEIJING
BRUSSELS
CENTURY CITY
CHICAGO
DALLAS
DUBAI
FRANKFURT
HONG KONG
HOUSTON
LONDON
LOS ANGELES
MIAMI
MUNICH
NEW YORK
PARIS
PHILADELPHIA
PITTSBURGH
PRINCETON
RICHMOND
SAN FRANCISCO
SHANGHAI
SILICON VALLEY
SINGAPORE
TYSONS
WASHINGTON, D.C.
WILMINGTON

reedsmith.com