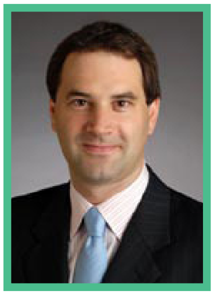
INDUSTRY NEWS

Obtaining Business Interruption Insurance Coverage Following Natural Disasters Like Irene and Sandy



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After Hurricane Irene and Superstorm Sandy-caused extensive property damage to businesses in 2011 and 2012, commercial policyholders looked to their insurance policies to cover the losses they sustained. Of course, those policyholders whose properties suffered direct physical damage turned immediately to their property insurance, which covers physical loss or damage to buildings and business property. Most commercial policyholders, however, also have coverage under their property insurance policy for business interruption losses—that is, those losses arising from the disruption to or inability to continue normal business operations. Business interruption coverage protects the revenue that the policyholder would have earned had the loss event not occurred.

Sandy interrupted businesses in a number of different ways. Some businesses were affected due to mandatory evacuations that forced closures in advance of the storm's landfall. Others suffered direct damage during the storm, forcing them to remain closed until that damage could be repaired. Still others that did not suffer direct damage were severely affected by power outages. By way of example, a hotel in the mandatory evacuation zone might have stopped accepting new guests in the few days before Sandy's arrival, while others nearby but outside that zone might have had to temporarily close down because of lost electricity or damage during the storm. For these and other reasons, hospitality businesses were interrupted and likely lost revenue that they otherwise would have had if not for Sandy. Most commercial property insurance policies have provisions that are designed to cover these types of losses, and commonly are referred to as "business income," "civil authority," and "service interruption" coverage.

In addition to these fairly common insurance policy provisions, losses from Sandy have raised some fairly novel issues that policyholders should consider in order to maximize their insurance recovery. After Sandy, various methods of public transportation had limited service or were shut down, railroad and subway tracks were flooded or damaged, and airports were closed forcing thousands of flight cancellations. As a result, customers' ability to access numerous hospitality businesses was adversely affected and such businesses lost revenue. Similar situations affected suppliers, which in turn likely affected profitability after the storm. If suppliers were not able to get businesses the goods they needed to operate—because they too suffered physical damage or because they were not able to travel—the businesses likely suffered losses because they could not provide to their customers what they promised. These types of losses also often are covered under the contingent business interruption coverage of many commercial property insurance policies.
Perhaps the most important issue for businesses badly affected by Sandy concerns flooding and the applicability of flood exclusions and sublimits. Some policies exclude flood but provide coverage for Sandy losses in certain specific circumstances, depending on the specific facts of the policyholder's loss. Some policyholders had flood coverage, but are facing arguments that a flood sublimit caps the total amount owed for all Sandy-related losses, even though the policy covers not only direct physical damage, but also various of the other coverages mentioned above. Whether or not a flood sublimit caps all Sandy-related losses generally depends on the wording of the policyholder's insurance policy, and the relevant wording of polices often varies on this point.

Ultimately, Sandy affected different businesses in different ways. Moreover, every business has a different insurance policy with different coverages and exclusions—and those differences can be substantial and significant. Accordingly, all policyholders are well advised to read their insurance policies carefully to determine what coverage is or is not available. Specifically, commercial policyholders affected by storms like Irene and Sandy should evaluate the extent to which business interruption coverage or other similar extensions of coverage obligate their insurance company to reimburse them for post-storm losses of revenue.

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