August 2020

ANDERSON KILL
POLICYHOLDER
ALERT

Rapid Response to Maximize Insurance Recovery After Hurricanes

By Finley Harckham and Dennis J. Artese

Hurricane Laura made landfall today on the coasts of Louisiana and Texas as a Category-4 storm, and while Houston was mercifully spared the worst, damage in the Lake Charles area of Louisiana and in the Beaumont, Port Arthur and Orange County areas of Texas is likely to be extensive. Laura is the second storm to cause severe disruption and damage in the United States this summer, after Hurricane Isaias triggered tornadoes and knocked out power for over two million east coast residents in early August. Hurricane season in 2020 is shaping up as forecast to be one of the most active on record, with more storms and damage likely ahead.

As businesses affected by Isaias and Laura work to restore their property and income to normal, they also need to stay on top of their insurance claims. Businesses on all U.S. coasts need to keep their guard up -- and that should include reviewing and toning up their insurance claims protocols.

When a storm inflicts serious property damage and business interruption on a business, insurance is not often the first thought. But response on this front needs to be as rapid and sustained as action to repair and restore property. Indeed, the two are often intertwined.

In the wake of a storm or other natural disaster, the following steps will get the claims process on the right track and help maximize insurance recovery.

Meet Prompt Notice Requirements - But Keep Your Options Open

Insurance policies generally require prompt notice of loss. Late notice can result in forfeiture of coverage in the worst case, and to needless coverage fights in less extreme cases. Policyholders should give notice promptly to all possibly relevant insurance companies.

At the same time, policyholders should be cautious in providing any specifics concerning the cause of loss until the policy has been reviewed and all facts have been obtained. In the immediate aftermath of a storm, the cause of loss can simply be listed as the storm itself or "the effects of" the storm.

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Unconsidered attributions as to the cause of loss may run afoul of policy exclusions, including anti-concurrent causation clauses purporting to exclude coverage for the full amount of the loss if both covered and uncovered perils contribute to cause the loss.

Commercial property policies typically have several other time-sensitive requirements. Many policies provide that the policyholder must file a sworn proof of loss within 30, 60 or 90 days of the date of loss or from request by the insurance company. Some states may modify this time period by statute.

Another key time-related issue concerns contractual suit limitations periods. Many property policies provide that any insurance coverage lawsuit must be filed within a short period of time — usually one or two years — after the inception of loss. Some states may modify this time period by statute, but be sure that any statutory extension applies to the cause of loss at issue (e.g., a statutory extension for fire losses may not apply to a flood loss). Written tolling agreements can help protect policyholders against suit limitations provisions.

Some policies also contain a "Replacement Cost Coverage Election" period. These periods provide a deadline by which a policyholder has to specify their intention to replace damage property and receive replacement cost coverage. There may also be a deadline by which a policyholder must complete repairs to obtain replacement cost coverage.

Undertaking and Documenting Emergency and Temporary Repairs

In the immediate aftermath of a storm, and sometimes in advance of a storm, a policyholder may have certain duties relating to the protection and preservation of property. Most policies require policyholders to mitigate damages and some require them to do so by resuming operations as quickly as possible.

Either the insurance company (on behalf of the policyholder) or the policyholder (with the consent of the insurance company) should retain an emergency restoration company to pump out any standing water, perform emergency/temporary repairs and secure the premises.

All activity and costs, both internal and external, should be fully documented with photos, videos and other written documentation. It is good practice for the policyholder to create an internal cost code specific to disaster recovery/repairs and have its own employees bill their applicable time to such cost code and document their activities.

who's who

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The insurance company should be kept fully apprised of all activity and damage and provided, in writing, with a reasonable time to inspect the premises before damaged, fully documented items are discarded.

Taking the Measure of Business Income Loss

Maximizing post-storm recovery entails assessing not only the physical damage to property but also income losses stemming from flooded and blocked roads and bridges, interruptions of shipping and air transport, evacuations, and closures by civil authority. Insured losses may extend well beyond the area of impact.

Business interruption insurance covers businesses for losses in income stemming from unavoidable disruptions to their regular operations as a result of covered damage to insured property. In addition to coverage resulting from damage to the policyholder's own property, "BI" coverage also may be triggered by circumstances including utility service interruption, a government evacuation order or a substantial impairment in access to a business' premises. Many property policies also provide "extended business interruption" coverage that begins when the property is fully repaired and ends when operations are ramped up to their pre-disaster level -- though that extension typically is limited to 60 days.

Contingent business interruption coverage is triggered when policyholders lose revenue after a property loss impacts one or more suppliers or customers. For example, businesses that rely upon specialty chemicals from the affected area may have to pay more for supplies, and companies that sell into the area, such as consumer products manufacturers and distributers, will suffer lost sales. While the business itself need not be physically damaged, it does need to have coverage for the type of damage that affected its suppliers, business partners or customers.

Extra expense coverage applies to additional costs incurred by the policyholder as a result of damage to its property, and to costs incurred to mitigate economic losses. This coverage often is very broadly defined. Contingent extra expense coverage applies when costs are incurred as a result of a business interruption caused by damage to the property of a supplier or customer.

For more information about the extent and limitations of business income coverage, please see Understanding Post-Storm Business Interruption Coverage.

This year, calculations of business interruption losses are complicated by the effects of the pandemic, which has massively depressed income year-to-date, with most businesses not back to normal when Isaias and Laura struck. Insurance companies will likely argue that storm-triggered income losses are minimal because income was low beforehand. Businesses should be prepared to dispute insurance company estimates that incorporate the months when lockdown effects were at their most intense.

Documenting and valuing post-storm losses is a complex task, and the claims process can be protracting. Our focus here is on getting off on the right foot -- by giving prompt notice without compromising coverage, by securing the property against follow-on damage that may not be covered, and by recognizing the scope of potential income losses and including them in the claims process. Understanding these tasks in advance and acting on them promptly are vital to full recovery.