SOUTHERN STUMPIN'

Fire Insurance

With wildfire season off to a wild start, it's vital for timber companies to know every nuance of their insurance policies and how to capture and claim the full range of losses when fire occurs. In this submitted article, insurance recovery attorneys Grant E. Brown and Dennis J. Artese of Anderson Kill P.C. lay out the key forms of coverage that should respond to fire damage, along with steps for managing and maximizing a claim.

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Horrific wildfires have ravaged America's Southeast, impacting Southern Georgia and Northern Florida. It is a bleak start to a wildfire season that could become even worse as severe drought grips much of the region. The timber industry that calls this part of the country home is particularly susceptible to wildfire risk. Businesses in this industry — plantations, mills, logging companies, biomass producers and others — that suffer property and economic loss from wildfires should look to their insurance for help – but be aware that there is much more to maximizing coverage than simply sending notice to your insurance company and reporting physical damage.

Responsive Insurance to First-Party Wildfire Loss

Some timber businesses may have industry-specific insurance to provide coverage for standing trees and other stock. Businesses may also have commercial property insurance to protect their facilities, equipment, and business revenue. Virtually all commercial property policies cover fire loss (whether under "all risks" or "named peril" insurance), so most policyholders should expect to receive prompt insurance coverage for fire-related loss. The insurance should cover physical fire damage to property as well as lost profits from an interruption of business related to the damaged property.

Commercial property policies also generally contain other coverage-granting provisions that respond to fire loss, including:

—Contingent Business Interruption: Contingent business interruption (CBI) coverage applies when policyholders lose revenue as a result of their suppliers or customers suffering property loss. Policyholders need not suffer any direct, physical loss to their own property to recover CBI insurance proceeds, but the cause of loss must generally be one that is covered under the policy. CBI coverage may be particularly responsive in the timber industry. Mills and biomass producers, for example, could suffer a significant economic loss if timber plantations from which they source raw materials suffer property damage that stymies production.

—Extra Expense: Extra expense coverage applies to those additional costs a policyholder incurs to mitigate its losses. This coverage is often broadly defined and is valuable to policyholders facing increased expenses to keep their businesses operating. This coverage could apply, for example, if a business must purchase timber product at higher prices from other sources to fulfill orders.

—Civil Authority: Civil authority coverage applies to economic loss suffered when authorities prohibit or limit access to an area. Civil authority coverage still must be triggered by physical loss or damage to property, but such damage can occur away from a policyholder's business (typically within a specified distance from insured property). This coverage could apply where officials limit access to an area due to ongoing fires.

—Debris Removal: Most policies contain sub-limited additional coverage associated with cleaning up debris following a natural disaster. Such coverage would likely respond to cleanup costs following fire damage.

Tips to Maximize Insurance Recovery

Policyholders spend significant premiums on commercial property policies and should be made whole when their businesses suffer setbacks or destruction. Below are steps policyholders can take to not only preserve, but maximize, coverage.

—Obtain the Policy(ies): If insurance documentation was destroyed in a fire, the policyholder can seek copies of the policies from its broker or directly from its insurance company.

—Provide Prompt Notice: Property policies generally require prompt notice of loss. In a worst-case scenario, late notice can result in insurance companies denying coverage. While policyholders may be able to overcome a "late notice" defense, they can avoid the issue (and expense) entirely by promptly giving notice of loss under all potentially responsive insurance companies. The policyholder's insurance broker may be able to assist with providing notice.

—Cooperate: To best advance a claim and to ensure compliance with any policy conditions, policyholders should respond promptly to all reasonable requests for information to the best of their ability. Correspond in writing where possible to preserve all communications. If communications occur by phone, follow up with an email or letter memorializing the discussion. The record may protect policyholders if the insurance companies engage in dilatory conduct or falsely claim they have not received all requested information.

—Assemble Experts: For large claims, policyholders may consider hiring experts to assist with advancing the claim. Public adjusters, who typically operate on a contingency basis, can prepare complex claims and negotiate with the insurance company. Forensic accountants can measure the extent of business interruption loss. Insurance coverage attorneys can advise on complicated coverage issues and help obtain recoveries from recalcitrant insurance companies. Insurance companies will have these experts available. Policyholders may be at a disadvantage if they don't have their own team to match that of the insurance company.

—Proofs of loss: Providing proof of loss is an essential aspect of the insurance recovery process and failure to submit the proof of loss within the timeframe specified in the policy may result in the insurance company denying the claim. The timeframe to submit a sworn proof of loss varies by policy. Some require submission of a proof of loss within 30 days of loss, whereas others do not require submission of a proof of loss for months. Policyholders should review their policy to confirm the deadline – and make sure they abide by it. If the policyholder cannot calculate the total loss suffered, it can file a partial sworn proof of loss, but it should reserve the right to supplement the proof of loss. Insurance companies may also agree to extend the time to submit a proof of loss. If they do, policyholders must confirm such agreement in writing. Public adjusters can assist policyholders in preparing a proof of loss package.

—Track the suit limitation: Some property policies contain a contractual suit limitation provision that requires policyholders to file a coverage lawsuit within a short period of time – usually one or two years from the date of loss. Policyholders should read their policies carefully and calendar all important dates contained within the policy and strictly abide by each. If the policyholder requests an extension of any policy deadlines, it should do so in writing well in advance of the deadline and preserve all correspondence with the insurance company. While policyholders may be able to overcome suit limitation provisions in certain jurisdictions based on the circumstances, it is best practice to avoid the suit limitation defense in the first instance.

—Read the fine print: Not all fine print in the insurance policy works against the policyholder. Some fine print requires insurance companies to make partial payments or policy advances—even where the amount of loss is not fully calculated. Whether or not such a clause exists in a particular policy, policyholders should request interim payments to fund recovery efforts and to provide a cushion while the property is being assessed for damage or is under active repair or reconstruction.

Policyholders pay their insurance companies significant premiums for peace of mind and financial protection. When disaster strikes, policyholders should look to be made whole and do what they can to best position themselves for a favorable recovery. **SLT**