



INSURANCE

ALERT

PRECAUTIONARY INSURANCE BEST PRACTICES FOR THOSE IMPACTED BY HURRICANE SANDY

By Carl Anthony Maio

If you are a business owner, a business that sustained commercial losses or a homeowner who suffered loss and damage as a result of Hurricane Sandy, do you know the principal insurance question that determines coverage?

Insurance scope of coverage is determined by cause of loss. Only two parties determine cause of loss: either the insured or insurer. Legal counsel can help position the policyholder to best utilize the cause of loss suited to your claim.

Insurance Policies Are Your Protection

- The immediate types and kinds of insurance coverages commonly implicated are:
 1. Homeowners, Commercial and Private Passenger Automobile;
 2. (a) Business Owners - Commercial General Liability, employment, landlord - rental, flood; (b) Flood - Governmental entities (Federal, State, Local), electronic data recovery, supply chain interruption and casualty losses related to leased property; and (c) Business interruption losses that will challenge types of losses including personal, property, time element loss and legal liability losses.
- Differing types of insurance policies and policy coverages along with certain exclusions all will factor

into how the insured and insurer adjust, value and respond to loss. Individual insurance policies (commercial and personal) apply in specifically designed ways to define and treat loss.

- All insurance claims and adjustment will be driven by “Cause of Loss” The Scope of Coverage (depends upon policy language) and its Cause of Loss are: (a) wind; (b) water damage; (c) fire; (d) snow; (e) inland flooding; and (f) storm surge.
- Fox Rothschild can assist in defining the Cause of Loss most beneficial for your policy coverages. What follows is what you need to know and do.

What You Should Do

1. **Obtain copies of all Insurance Policies.** If you are uncertain you have the correct policies or policy years, contact your insurance producer, who will provide a duplicate copy for you.
2. **Document and photograph losses and damage to property.** If possible, locate “before” photographs for purposes of contrasting with “after storm” photographs. Some states have altered insurance adjusting rules to accept photo documentation of losses so that debris can be discarded.
3. **Prepare an inventory.** Include receipts in the event items or fixtures, appliances, furnishings, repairs

made in the past three years.

4. Policy deductibles and retentions. One of the more important pages of an insurance policy is the Policy Declarations, which contains the name of the insured, policy period, limits of liability, description of coverages and property locations. On the Declarations Page are separate item deductibles, sometimes referred to as retentions. In the case of Hurricane Sandy, four states thus far (New York, New Jersey, Pennsylvania and Connecticut) bar insurers from imposing hurricane deductibles on homeowners. This does not excuse the policyholder from paying a standard deductible for storm-related damage. What it does do is lessen the retention from paying higher hurricane deductibles, which can be as much as one percent of the limits of liability.

5. Communications. All communications with insurers and their representatives, specifically adjusters, are procedurally treated the same for homeowners, private passenger auto, commercial multi-peril, commercial general liability and business insurance policies.

Be aware that all insurance policies impose duties upon the insured, such as to preserve and protect property from increasing damage. As a property owner, be prepared to exercise and execute emergency measures to protect your property. For example, roof damage may require the installation of a tarp to minimize future damage.

Business Interruption Insurance

Two coverages applicable in the business context but not the homeowners context are Business Interruption Insurance and Contingent Business Interruption Insurance.

1. Business Interruption Insurance, also known as Business Income Coverage, is insurance that covers loss of income suffered by a business when damage to its premises by a covered cause of loss results in a slow down or suspension of its operations during the time required to repair or replace the damaged property. Accounting documentation will be required to support damages claims.

2. Contingent Business Interruption Insurance is more properly known as Dependent Properties Time Element Coverage. This type of coverage pays for the loss of income or increase in expense resulting from damage from a covered cause of loss to the premises of another organization on which the insured depends, such as a key supplier or customer.

Dealing With Adjusters

Initial communications with adjusters are designed to describe the nature of the loss to aid the adjuster in preparing an estimate. The adjuster will come to your home or business site and look at all areas of damage that are pointed out. Frequently, adjusters will not exercise independent initiative to look for hidden damage. Therefore, an estimate is just that, and not a final determination of the claim. This is the point at which when in doubt, a policyholder requests a “reservation of rights” to preserve your rights to conduct your own investigation with your own consultants, for the purpose of protecting the interests of the policyholder. The reservation of rights is without prejudice to both the insured and insurer.

Immediate Checklist for Use

1. Notice: Policyholders should evaluate all insurance policies and send notices of claims to all insurers that underwrote a policy. In most cases, notice to the producing insurance agent satisfies this requirement.

2. Documentation:

- Property loss and damages including emergency repairs, mitigation, restoration.
- Photographic/video documentation is a good time-saving substitute for taking inventory.

3. Use of Professional Claim Consultants. Sworn statement proof of loss may be required. First party losses are common, third-party liability should not be ignored.

4. Undertake repairs only after the insurance adjuster completes the inspection and authorizes repairs.

5. Some business policies contain a 72-hour waiting period.

General Observations About Hurricane Sandy

Early insurance property and casualty industry damages estimates relating to Hurricane Sandy have been suggested to be well in excess of \$30 billion. In time, loss development will determine a more precise damages figure. The affected geographical areas have experienced losses that impact nearly every industry, business and homeowner. Transportation, rail, airlines, crops, utilities, commercial and retail business, employers, automobile, homeowners and commercial

general liability will have sustained direct and indirect losses. Business interruption and catastrophic losses are anticipated.

If any of these losses are applicable to you, please reach out to your Fox Rothschild attorney, who can help you in the exercise of insurance best practices.

If you have questions about this Alert, please contact Carl Anthony Maio at 215.918.3616 or cmaio@foxrothschild.com or any member of Fox Rothschild's Insurance Practice.



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