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COMMENTARY

Weathering the Storm: Five Tips for Maximizing Insurance Recoveries for Hurricane Matthew Losses

With Hurricane Matthew having pummeled certain islands in the Caribbean and much of the southeastern seaboard of the United States, businesses will soon look to secure insurance recoveries for the estimated billions of dollars in property damage and business income losses left in its wake. While the safety and security of those affected should remain the first priority, the recent experiences of Hurricanes Katrina, Ike, Irene, and Sandy demonstrate that commercial policyholders who pursue coverage promptly and diligently stand the greatest chance of maximizing their insurance recoveries for hurricane-related losses. To that end, set forth below are five tips for your business to consider when seeking insurance coverage for Hurricane Matthew losses.

1. Collect and Review *All* Potentially Applicable Insurance Policies

When pursuing insurance for hurricane-related and other catastrophic losses, it is important to keep in mind that coverage may be available under several different types of insurance policies, including those outlined below. Accordingly, policyholders should obtain and carefully review *all* policies that may potentially respond with coverage, including those in which your business is identified as an "additional insured."

First-Party Property. Many businesses affected by Hurricane Matthew will look to the first-party property insurance included within their commercial insurance program. While referred to by a variety of names (e.g., "Inland Marine" or "Multi-peril"), commercial property insurance generally provides coverage for physical damage to or loss of use of business premises and other property (e.g., inventory, equipment, and machinery) owned, leased, or otherwise in the policyholder's care, custody, or control.

Business Interruption. Also commonly included within a company's commercial property insurance program, business interruption insurance is intended to protect businesses against income losses sustained as a result of disruptions to their operations due to a hurricane or other covered peril. Business interruption coverage frequently requires that the policyholder sustain "direct physical loss of or damage to" insured property, which can include incidents that render property uninhabitable or otherwise unfit for its intended use. Contingent business interruption coverage similarly provides

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insurance for financial losses resulting from disruptions to a business's customers or suppliers, usually requiring that the underlying cause of damage to the customer or supplier be of a type covered with respect to the business's own property.

Extra Expense. A policy's business interruption coverage may also provide insurance for "extra expense." Extra expense coverage indemnifies the policyholder for costs in excess of normal operating expenses incurred in order to continue operations while the business's damaged property is repaired or replaced. Covered extra expenses typically include the rental cost for substitute facilities, moving and hauling expenses, overtime wages, temporary labor, and advertising.

Service Interruption. Service interruption coverage provides insurance for property damage (e.g., spoilage of perishable goods) and business income losses caused when utility services (e.g., electric, gas, sewer, or water) to insured premises are interrupted. Service interruption coverage usually requires physical damage to the property of the utility company used by the policyholder, and it can sometimes require that the damage occur within a specified distance of the policyholder's own premises.

Civil Authority Coverage. Commercial property insurance policies often provide coverage for business income losses sustained when a "civil authority" prohibits or impairs access to the policyholder's premises (e.g., through evacuation orders, road and mass-transit closures, or the imposition of curfews). Depending upon its specific wording, a policy's "civil authority" coverage may or may not require that the access restriction result from "physical loss" and, if so, often does not require that "physical loss" occur to the policyholder's own property. Given that federal, state, and local governmental authorities have already taken a number of the above-referenced measures in response to Hurricane Matthew, "civil authority" coverage may respond with insurance for the attendant income losses of affected businesses.

Ingress/Egress Coverage. In addition to access restrictions caused by governmental authorities, the physical damage resulting from Hurricane Matthew may itself limit access to business premises. Ingress/Egress coverage provides insurance for business income losses incurred when access to and from insured premises is severely restricted or prevented by such physical damage occurring in the vicinity of those premises (e.g., by flooding, felled trees, or downed power lines).

2. Timely Comply with Notice, Proof of Loss, and Suit-Limitation Provisions

While the particular notice requirements vary by policy and applicable state law, a policyholder's failure to timely meet these deadlines may unnecessarily complicate its insurance recovery, or, worse, insurance companies will argue that such a failure to meet these deadlines in a timely fashion results in a forfeiture of coverage. Commercial insurance policies typically contain two important notice requirements, which policyholders should take care to satisfy: (i) initial notice to the insurance company of the loss (usually "as soon as practicable" per the policy's terms); and (ii) filing with the insurance company a sworn "proof of loss" (often within 60 days of the loss-causing event or, under the laws of certain states, within 60 days of an insurance company's request). In addition, certain commercial insurance policies require a policyholder to commence litigation against its insurance company within 12 or 24 months following the loss.

Policyholders should accordingly err on the side of caution by promptly giving notice of a loss under all potentially applicable insurance policies. In addition to timing, policyholders should also follow any instructions set forth in the insurance policy concerning the manner of notice (e.g., whether the notice must be in writing, to whom notice must be given and what information must initially be provided).

Policyholders should also bear in mind that provisions specifying deadlines to supply a "proof of loss" or file suit can be extended by written agreement, provided the extensions are to a date certain and not indefinite. Indeed, because in a number of jurisdictions the filing of a proof of loss triggers a similar deadline for the completion of an insurance company's own claim adjustment, many insurance companies routinely consent to such extensions.

3. Document Your Property and Business Income Losses

In order to obtain full insurance reimbursement, it is essential that you keep a complete and accurate record of your losses. Policyholders should therefore immediately begin preparing a detailed and contemporaneous record of all property and income losses in support of their claims. This should include photographs and/or video of damaged or destroyed real property, equipment, and inventories, together with corresponding invoices and estimates for their repair or replacement. Similarly, any correspondence evidencing your business interruption loss (e.g., order and event cancellations, and the hurricane's impact on customers and suppliers) should also be preserved.

4. Document the Claims Adjustment Process

Policyholders should likewise maintain a complete written record of all claim-related communications exchanged with their insurance companies (e.g., claim submissions, responses to information requests, and any telephonic conferences held). Policyholders should also be sure to memorialize any insurance company inaction (e.g., missed deadlines, cancelled meetings, or late payments) as part of their claims correspondence. Doing so not only helps to facilitate the claims adjustment process, but it is often useful to policyholders in any subsequent insurance coverage litigation.

5. Assemble an Appropriate Insurance Recovery Team

Although many policyholders will interface only with a single "loss adjuster" acting on behalf of the insurance company, the loss adjuster is typically supported by a larger network of behind-the-scenes consultants (e.g., forensic accountants, engineering/construction experts, and outside coverage counsel) skilled in minimizing claim payouts. While policyholders are encouraged to marshal their available internal resources (e.g., in-house risk managers and accountants familiar with the business), the early engagement of experienced policyholder counsel, along with outside forensic accountants and public adjusters as needed, can help to level the playing field by ensuring that your claims are properly prepared and presented under available insurance coverage and applicable law.

By following the above tips with persistence (and patience), commercial policyholders will best position themselves to maximize insurance recoveries for their Hurricane Matthew losses.

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