

Maximizing Insurance Recoveries for the 2018 Hurricane Season

IN SHORT

The Situation: On August 23, 2018, Hurricane Lane made landfall on Hawaii, dropping more than 52 inches of rainfall—the second-highest storm rainfall total in U.S. history.

The Result: Hawaiian businesses are recovering from substantial property damage and business interruption losses.

Looking Ahead: Commercial policyholders affected by Hurricane Lane should collect and review all potentially applicable insurance policies, remaining mindful of notice, proof of loss, and suit-limitation conditions.

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With Hurricane Lane having battered the Hawaiian islands, businesses will soon look to secure insurance recoveries for the severe 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, Sandy, Harvey, Irma, and Maria 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 losses resulting from Hurricane Lane and preparing for the remainder of the 2018 hurricane season.

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. 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."

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 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 initially must 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



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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 losses sustained during Hurricane Lane and the remainder of the 2018 hurricane season.

TWO KEY TAKEAWAYS

1. Experiences in the aftermaths of Hurricanes Katrina, Sandy, and others indicate that commercial insurance policyholders who pursue coverage promptly and diligently maximize their chances of recoveries for hurricane-related losses.
2. Policyholders should review any and all possibly applicable policies for coverage, including those where their companies are identified as "additional insured."

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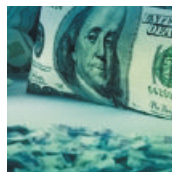


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