

# Insurance And Hurricane Ian, Part 1: After The Storm, Are You Prepared To Litigate Against Your Insurance Company?

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## Highlights

- Put your insurance company on notice immediately of any claim or potential claim related to storm damage, such as from Hurricane Ian
- Take time to locate and review your insurance policies now
- Expect the insurance company to play games and delay adjusting and paying the claim. Analyze all communications from your insurance carrier carefully and do not agree to their adjustment of the claim without fully understanding their methodology and logic

Hurricane Ian left a wake of catastrophic damage across Florida. Policyholders in southwest Florida and beyond will be looking to their insurance companies to pay their claims. Insurance companies will respond to the wave of claims by looking for ways to deny or limit coverage under the insurance policies for which they already accepted premiums.

In the days leading up to the hurricane, news outlets and pundits spoke at length on the importance of “being prepared” for the storm. But how prepared is your company to litigate a claim against its insurance company if necessary?

Litigation against any party is often a costly and lengthy process. Insurance coverage disputes are no different and often involve more aggressive tactics by the insurance company early in the case.

Below are six best practices for companies who have suffered large losses as a result of Hurricane Ian and may have had their claims denied.

## **1. Review and study any coverage communication from the carrier.**

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- Most reservation of rights letters will give insight into the carrier's strategy to deny or limit its responsibility to cover the claim
  - Consider leveraging the broker. For example, renewal time for your insurance policies or your broker's relationship can provide leverage for resolving the claim outside of litigation.
  - Consider whether it would help to have coverage counsel analyze the denial and coverage issues

## **2. Review whether the insurance company raised so-called policy conditions as part of the denial.**

- Did the insurance company raise a question of notice?
- Does the policy require a sworn proof of loss or examination under oath before filing suit?
- Is there a time limitation in the policy to bring a lawsuit?

## **3. Analyze the appropriate forum.**

- Insurance coverage disputes often hinge on what state's law will apply and insurance companies have been filing suit first more frequently in jurisdictions that they believe will apply more favorable law; it is a best practice to be aware of where to litigate
- Consider whether there are statutory notice requirements for bad faith claims

## **4. Organize your claim information sooner rather than later.**

- Collect the policies and other policy-related documents
- Identify and talk with key witnesses in your company
- Evaluate whether a litigation and preservation hold might be necessary
- Gather the claim information and consider using a database

## **5. Understand that the playbook for insurance companies usually involves early motion practice.**

- Insurance companies often file early motions like removal, transfer, or motions to dismiss
- In some cases, insurers will file a motion to compel arbitration

## 6. Be patient.

- Consider working with coverage counsel to weigh your options
- It often takes time to get to the place in the litigation where the insurance company will consider settlement

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