

Hurricane Harvey Alert: Insurance Considerations

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Amid the immediate concerns of public safety and restoring business operations, companies can take certain steps to protect their insurance assets.

For business owners affected by Hurricane Harvey and its aftermath, it will be important to protect insurance rights by taking immediate steps. Most businesses have property insurance as well as liability insurance. Many commercial property insurance policies (or the property portion of a business owners policy or package policy) provide coverage for business interruption and loss of use of property. While the most immediate concerns are public safety and restoring business operations to normalcy, certain steps may be necessary in the near term to protect insurance assets.

Analyze Your Insurance Policies

It is crucial to evaluate all potentially applicable insurance policies for coverage. Property insurance is the first type of coverage to look to, but there may also be auto policies, “package” policies, marine policies, and general liability policies that are responsive.

In addition to providing coverage for physical damage to an insured’s property, many commercial property insurance policies also include coverage for losses due to the interruption of the insured’s normal business activity, including losses due to damage to utilities, customers, suppliers, infrastructure, and other critical, or dependent, properties. These extended coverages may apply even if the insured’s own property is not physically damaged. Policies typically cover loss of business income “during the period of restoration,” from when physical loss or damage takes place through the period of rebuilding, repairing, or replacing damaged property. Such coverage is particularly valuable where businesses are grappling with catastrophic months-long disruptions to their operations. Depending on policy wording, damage to suppliers or customers may result in covered “contingent business interruption” losses. This coverage may be critical to businesses where supply chains are disrupted.

Keep Records of Your Losses, Including Your Business Interruption and Contingent Business Interruption Expenses

Carefully documenting losses is important. Documentation for property loss includes not only property that was damaged but also any property rendered unusable. There may also be an obligation to preserve and protect the property from further losses, including mitigating damage. Business interruption coverage reimburses insureds for lost income during the time that the business was interrupted because of a hurricane. Contingent business interruption provides coverage for business interruption losses due to damage to customers or suppliers. These coverages require valuing and documenting the losses.

Provide Notice and Follow Policy Terms to Preserve Rights

Insurance policies require various kinds of notice, including notice of accident or occurrence and notice of claims. Notice requirements in policies variously use the terms “prompt,” “immediate,” and “as soon as practicable.” There is no such thing as too much notice—and such notice needs to be in writing—so erring on the side of more notice rather than less is recommended. As of September 1, 2017, there will be a new Texas statute on notice impacting insurance claims noticed after that date, including the timing and the form that notice must take under a contract of insurance.^[1]

After notice of loss, property policies also usually require that the insured later submit a sworn “proof of loss” to catalogue the damages. Policies sometimes require the insured to submit this proof of loss within a fairly short time after the hurricane. In addition, insureds must also preserve and protect the property from further losses, including taking steps necessary to mitigate (or minimize) additional damage, including business interruption.

[1] See Texas Insurance Code §§ 542.051 (4), 542.055, and 542.056.

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