

Client Alert

CLIENT ALERT - Critical Steps For Businesses To Preserve Hurricane Sandy Insurance Coverage

November 6, 2012 -- Picking up the pieces after Hurricane Sandy is a task presenting many challenges to businesses in the Northeast. Your company's insurance policies, however, can be crucial assets as you navigate the challenges ahead. All businesses affected by Hurricane Sandy should examine their insurance policies and act on recovery plans now, taking the essential steps outlined below to help maximize Sandy-related insurance claims.

A company's property and flood insurance policies typically cover the cost to repair physical damage to property. These policies may also provide a means to recover the profits lost due to power outages and commercial disruptions. Importantly, even if your business did not suffer direct physical damage to its facilities, loss of revenue or destruction of inventory due to disruptions that your employees, customers or suppliers may have faced could be deemed a "supply chain" or "contingent business interruption" loss of revenue and sales, which may be recouped under your insurance policies.

Property and business interruption insurance policies are often complex. But taking the time now to understand your insurance coverage and your rights, and putting together a plan to submit your insurance claim, can greatly improve your insurance recovery.

THE PLAN

Your company's recovery plan should be detailed and should identify the individuals who will handle each aspect of the claim — from examining and identifying the correct insurance policies, to preparing the proof of loss and negotiating the claim with the insurance company. Here are some basic steps to help you facilitate your company's recovery plan.

1. Review All of Your Insurance Policies for Potential Coverage.

First-party insurance policies are the most likely to respond to losses related to Hurricane Sandy. These policies protect against loss and damage to property, and they can have various titles, including "property," "equipment," "inland marine," "fire," or "multiperil" policies. If your

company or facilities are situated near waterways that experienced storm surge during the storm, flood insurance might also apply. Businesses should examine all first-party policies, and look beyond physical damage to property and equipment to determine what additional coverages might be tapped to maximize recovery for their full range of their losses.

Property insurance policies often include additional coverage beyond physical damage or loss, and many businesses have coverage under their insurance policies for expectations of profit in the form of “business interruption” losses. Generally speaking, business interruption losses are measured as lost revenue less non-continuing expenses during the loss period following a catastrophic event. Many commercial property insurance policies also cover extra expenses that are incurred due to an occurrence or that are incurred to minimize the policyholder’s business interruption loss.

Significantly, many commercial property insurance policies also cover lost profits caused by, for example: orders of civil authority (e.g., evacuation, transportation limitations, mass transit closure or service disruptions) that limit access to your business; damage to other businesses that attract customers to your business; or damage to property of customers or suppliers that adversely impact the your business. These losses, although not “caused” by the storm itself, might be covered under particular policies.

2. Give Notice to Your Insurance Companies

Even if your company did not suffer any property or facility damage, if your suppliers and/or customers have been impacted, you should immediately notify your insurance company of your potential claim. Because late notice, or no notice, can seriously impede a policyholder’s right to recover, it is best to provide notice even if you do not yet know all the particulars of your claim. Additionally, your insurance policy may specify that notice be provided in a particular manner or on a specific form. Examine your policies and make an effort to follow the notice requirements, bearing in mind that you will be able to supplement your notice at a later point as the contours of your claim develop over time.

3. After the Loss: Take Stock, Mitigate Your Losses, And Document All Extra Expenses

Your company should carefully and thoroughly document all losses, including increased additional payroll expenses; overtime paid to employees in connection with claim compilation, loss clean-up and remediation; and other expenses associated with mitigating losses, extra expenses, logistics, travel, etc. You should maintain all related receipts, work orders and payroll documentation should be retained and accounted for in the normal course of your business. Do not discard damaged property, and, when possible, preserve the area of the loss to allow for inspection. The taking of pictures and videos can also be useful in documenting your losses.

Insurance policies generally also require policyholders to preserve and protect insured property and to mitigate business losses by seeking alternative suppliers, sources of inventory or employees. Companies should be mindful of these obligations, and comply to the extent possible. These mitigation costs, including, for example, the cost of an engineer or consultant to assist with mitigation measures, are often recoverable.

4. Preparing and Pursuing Your Claim

Companies should designate an internal team to compile claim information and communicate with their insurers. All claim-related submissions, information and communications with the insurance company should be documented. Because insurance companies frequently contest claims or reserve their right to contest claims, it is vital to maintain accurate records of loss items and all related communication. Additionally, you should keep your insurer informed or authorize your representative or attorney to keep the insurer informed on a regular basis.

External resources might also be necessary; forensic accountants, public adjusters and insurance coverage counsel can all provide valuable services to policyholders, particularly with regard to large claims and claims requiring detailed policy analysis or preparation. If in doubt, it's best to discuss these issues with an insurance coverage lawyer.

Finally, if your claim is rejected, either in whole or in part, do not simply accept the insurer's position. Do not assume that the insurer's position is correct, or that your claim is excluded by a policy provision to which your insurer might refer. Interpretation of insurance policies can be a complex legal matter, and an insurance coverage lawyer can assist you in pursuing your claim in the face of a carrier's rejection of a claim. Experienced counsel may increase your recovery, particularly in the context of large and contested claims.

Recovering under your insurance policies is an important step in restoring your business in the wake of hurricane Sandy. The insurance claims process does not move quickly, and is frequently complex. By taking the appropriate steps, and seeking the advice of insurance coverage counsel, can help to maximize your company's recovery and minimize your losses.

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