

A yellow right-angled triangle pointing towards the top-left corner.

BLOGS

Natural Disasters

Five Ways to Maximize Insurance Recovery in the Immediate Aftermath of Florence

Hurricane Florence has caused devastation throughout the Carolinas, including as-yet-unknown property damage, business interruption, environmental contamination, and most tragically, loss of life.

When a disaster like Florence occurs, corporate policyholders enter crisis mode, doing everything they can to make sure business losses are mitigated to the extent possible, providing workarounds for customers, and generally making every effort to salvage what they can and assess the losses incurred. What might not be on any policyholder's radar screen, however, are the steps that can be taken now to maximize insurance coverage and recovery once the immediate crisis is over.

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Decisions made and actions taken at the outset of an insurance claim when the crisis is still unfolding and resources are stretched to their maximum can understandably lack the level of strategic thinking that the policyholder would apply in the absence of disaster. As a result, those actions and decisions are too often used against the policyholder down the road when things have returned to relative normalcy.

Right now, there are five things that every policyholder that has sustained property damage or business interruption due to Hurricane Florence can do with virtually no effort to make sure that there are no missteps in the insurance process:

1. Give notice!

As mundane as it may sound, giving notice of loss to your insurer as soon as practicable is important. If you don't give notice, you are at risk of losing coverage for some or all of your claim. And don't worry about the time and effort it will take; it's not hard to do. Just call your broker and ask them to notify your carrier. Don't worry about all the details at this point, just get the insurance carrier engaged and the process underway. There will be time to worry about the details later.

2. Cooperate, but don't elaborate.

It is human nature to want to "help," particularly when a disaster strikes. It is also human nature to assume that "you are in good hands" with your insurer because that is, of course, what we are conditioned to believe. But do not fall into the trap of offering answers to questions that haven't been asked, or giving an opinion on how the loss occurred or what losses have been sustained at this nascent stage. Policyholders have an obligation to cooperate in the process, but that cooperation need only be reasonable. Don't be afraid to tell the insurer or adjuster that you need some time to respond. Answering questions without thinking them through and providing unsolicited opinions are not going to make the claim process move any faster.

3. Pick up the phone, and limit internal emails about the insurance claim.

It is easy to be cautious when talking to an insurer representative. It is not always so easy to do the same in internal communications. To the extent possible, don't put your thoughts, opinions or "analysis" of losses, causes of loss, or coverage in writing. Things are moving rapidly in the first days after a disaster and often what we think we know now can change. Of course, provide management with updates, but don't offer up written opinion or analysis. You don't want your email to be the one everyone points to as the reason that losses are not covered. Assume that all emails will be in the insurer's hands at some point, so keep the written communications factual, and pick up the phone as much as possible.

4. Get your documentary ducks in a row.

Given the chaos that ensues upon an event like Florence, it is important to task someone with responsibility for being the company's voice to the insurer, and to at least beginning the process of assembling the material you will need to document the claim. That means more than just collecting the various insurance policies and insurer correspondence. It means assembling your customer lists, contracts, shipment and inventory information, and other documentation that you will need not only to show the value of the property lost or damages, but also to prove up the business interruption losses – i.e., loss of income resulting from the property damage. As bad as the property damage might be, the down time and loss of customers may ultimately be as bad if not worse, so start pulling together the information you need to document it now.

5. Don't be afraid to engage coverage counsel.

As management sees the floodwaters rising, the natural temptation is issue a decree that no "non-essential" costs should be incurred. Be warned: The larger the disaster is, the more likely disputes will arise, because the insurer's exposure is probably far greater than yours. Nothing in this world is certain, but it is a safe bet that if your carrier has insured your business, they have insured many others in the disaster zone. That means any position an insurer takes on your claim may have repercussions, and as an institutional litigant, you can be sure that the insurers have already engaged counsel to protect their interests and limit their liability. So, even though the company is not in litigation, even if it has a professional risk manager and/or the company's broker is pitching its in-house "claims advocate" at no extra charge, you still need to carefully consider engaging coverage counsel now – not to file a lawsuit or start a fight when none has yet arisen, but rather, to provide advice to management, to assist in navigating the process and to think through all the coverage issues and how to best handle them, so that there is no dispute down the road.