



LEGAL UPDATES

Understanding Business Insurance in the Wake of Hurricane Helene

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Current reports estimate there will be over \$5 billion in insured losses from Hurricane Helene, as the devastating hurricane tore through at least six states and has resulted in over 100 deaths since Thursday, September 26, 2024.

In addition to flooded roads, a lack of basic services, and stranded individuals, Hurricane Helene brought catastrophic damage to residential and business properties from storm surges, power loss, flooding, wind, environmental contamination, and business interruption.

Policyholders whose business is located in the 800-mile path of destruction across the southeastern US are working to mitigate their losses, build their businesses back up, and triage client and employee issues. What policyholders might not know is that insurance recovery is critical to providing your business financial and practical assistance in the wake of natural disasters like Hurricane Helene. And, the sooner your insurance carrier is involved, the more guidance you will have on how to rebuild and resume your company. But, a policyholder in crisis may understandably lack factual information and/or time to strategically think about what goes into an initial insurance claim. And, because insurers can and do use actions taken at the outset of the claims process to underpay and deny claims, below are five easy tips to help policyholders navigate the complex insurance claims process and maximize coverage.

1. Identify and review all potentially applicable policies, certificates of insurance, or other secondary evidence of insurance that may potentially cover you and your business.

Policyholders should also review any contracts with business partners that have added you as an additional insured. If unsure about your coverage, do not rely on an interpretation by your insurance broker, as that interpretation will not be binding on the insurance carrier. Remember that insurance policies are contracts, subject to court interpretation.

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2. Give notice to any and all insurers that may provide coverage for your losses.

Your insurance broker, attorney, or in-house risk manager can quickly notify your insurer of a claim without too much hassle or information. Don't worry about the details at this point, just get the carrier engaged and start the claims process. Many policies also have reporting and proof of loss deadlines that you may need to comply with, even in the aftermath of a disaster. Although your primary focus will be on ensuring the safety of employees and making sure the company fully resumes operations and services, knowing the key policy deadlines and requirements will help the company maximize insurance recovery and avoid a situation where the insurer can escape coverage on a technicality.

3. Document losses, efforts to make repairs, and any mitigation of further losses.

Although policyholders are capable of keeping track of potentially insurable losses themselves, a best practice – especially in the midst of a disaster, when other business needs should take priority – is to retain an accounting or similar firm that specializes in calculating and documenting property, business interruption, and contingent business interruption losses and claims. There may even be coverage for these professionals in your policy, so always check the policy language and advocate for these costs from your carrier.

4. Be careful in your internal communications.

After a catastrophic event like Hurricane Helene, you will need to communicate rapidly and efficiently with colleagues, but keep in mind the factual record you create with those first communications. Assume emails, texts and chat messages may end up in your insurer's hands or before a court. Keep communications professional in tone, clear, and limited to factual information that is known and verified. Avoid injecting opinions or speculating on matters that are unknown. Keep privileged communications clearly marked as such and opt for phone calls or in person meetings when possible.

5. Get help if needed.

The larger a disaster is, the more likely disputes will arise. Since an insurer's exposure during a hurricane is probably far greater than yours, as it undoubtedly insured more than one business in the path of the storm, the position the insurer takes on your claim is likely going to have repercussions with other insureds. To be sure, insurance carriers have already engaged counsel to protect their interests and limit their liability for Hurricane Helene, as its aftermath has been documented as "apocalyptic" and the resultant damage and death toll are still being reported. Also, because claims like this will be prevalent in the coming months and years, litigation involving the interpretation of specific provisions and exclusions will be forthcoming. These provisions are notoriously difficult to decipher. So, even though the company is not in litigation yet, even if it has a professional risk manager, 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.