
Hurricane Matthew Requires Immediate Action to Maximize Insurance Recovery

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After tearing through the Caribbean, Hurricane Matthew's path brought it north to the Southeastern coast of the U.S., bringing evacuations, business closures and damages to the region. Florida, Georgia, South Carolina and North Carolina have declared states of emergency.

As business and property owners weather the storm, they should also prepare for the aftermath of bringing these losses to their insurance companies. As they prepare to take stock of their losses, plan their response, and examine their insurance policies and their recovery options, they are going to face many questions. How am I going to pay to repair damaged property? What is the quickest way to resume my business? Can I recover any of the profits I lost when my business was interrupted or my customers' or suppliers' businesses were interrupted? Are there any government funds, such as FEMA assistance, available to aid my recovery?

Securing insurance proceeds and FEMA assistance is crucial to the recovery process. To help address some inevitable issues, and to assist with the initial insurance claim and FEMA application processes, we provide the following guidance.

1. Obtain and Review Your Insurance Policies.

To begin with, it is crucial to obtain, review and evaluate all potentially applicable insurance policies for coverage. Understanding your rights and obligations requires a thorough review of the policies to determine what coverages may apply. Property insurance is the most obvious source of coverage, but do not overlook auto policies, marine cargo policies, pollution policies and, for those facing potential third-party claims, liability policies. Also be aware that your policies may be subject to other requirements, such as statutory requirements, that could impact the terms of your coverage.

When reviewing your insurance policies, note any deadlines and calendar those dates with reminders set several weeks before the deadline. First, calendar the policy deadlines for you to give notice, file a sworn proof of loss, and file suit if you disagree with the insurance company's coverage determination (note the deadline to file suit might be years in the future). Any tasks that must be completed within a "reasonable"

amount of time should be done as soon as practicable. Missing deadlines can be fatal to an insurance claim.

2. Assess All Possible Coverages.

With respect to storm-related damages, “first-party” policies such as commercial property policies are the ones most likely to provide coverage for business or property owners’ own losses. Although residential policies frequently exclude flood loss, floods may be covered under commercial policies. Even when a flood is not an insured peril, there may be coverage when another, covered cause (such as a wind or power outage) contributes to or ensues from the loss, as in a fire caused by a flood-related transformer explosion.

In addition to providing coverage for physical damage to an insured’s property, many commercial property policies also include coverage for losses due to the interruption of the insured’s normal business activity 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 was not physically damaged. For example, depending on policy wording, damage to certain suppliers or customers may result in covered “contingent business interruption” losses. This may be critical to businesses whose supply and customer chains are disrupted as a result of damage to and closure of transportation infrastructure, including roads, railroads and even intercoastal waterways.

Similarly, disruption of power and other utilities may trigger losses insured by service interruption coverage. As well, curfews, prohibitions against entry and physical obstructions to roads may trigger civil authority or loss of ingress/egress coverage. A thorough review of the insuring provisions is critical to determine whether, and the extent to which, such coverage may apply.

3. Place All Insurers on Notice.

Even if you have not yet identified all of your losses, or determined that a policy might apply, provide notice as soon as possible to any insurance company under whose policy you might seek coverage. Do not assume you do not have coverage. Give notice anyway. Notice is just that: notice to your insurance company that you might have a claim. It does not need to be too detailed at first, so there is no reason to delay in providing notice. Be sure to precisely follow the directions in each insurance policy regarding notice, and be aware that different policies might have different notice requirements. Pay close attention to your notice deadline, the person or organization you have to notify, and the required form of notice. Insurance brokers may be best positioned to provide the notice, so consider consulting with your broker for assistance.

4. Document and Mitigate Your Losses.

Carefully documenting losses, especially before you undertake any cleanup efforts, is critically important for evaluating the loss. This includes not only property that was damaged during the storm, but also any property rendered unusable in the days following the storm—for example, inventory exposed to moisture. Take notes and photographs. Keep a log of all actions taken. Track expenses for professional fees, mitigation and clean-up costs. Establish separate accounts to track losses. Save all repair receipts and other records of additional expenses made necessary by storm-related damage. Remember: Most phones have pretty good cameras in them; take pictures and otherwise document your losses. (But also

remember: If you rely on your phone, make appropriate copies—make a “back up” of your records. Those photos won’t do any good if you lose them.)

You might also have an obligation to preserve and protect the property from further losses, including mitigating additional damage. Because such steps are required, mitigation expenses are covered under property insurance policies. For example, if a building is flooded, policies require the insured to take necessary steps to dry out flooded areas, and therefore provide reimbursement of such mitigation expense, subject to certain limits. Lastly, the insurer may have salvage rights to damaged property and stock, so it is important to preserve any salvageable property to the extent possible.

5. Detail Your Business Interruption and Contingent Business Interruption Claims.

Business interruption coverage reimburses insureds for lost profits during the time that the business was interrupted because of an event (like rain and flood). Contingent business interruption provides coverage for business interruption losses due to damage to customers or suppliers. The biggest challenge in securing coverage for either of these types of insurance is valuing and documenting the loss. It is crucial to keep detailed records documenting when and how your business was interrupted.

6. Engage Experts.

It is usually prudent to engage professional claim consultants, such as forensic accountants, particularly when you have business interruption loss. Additional experts may be needed to model the unique financial aspects of your business. Their professional fees and other mitigation expenses are frequently covered under property policies, subject to sub-limits. Usually, public adjuster fees are not covered.

It is also a good idea to retain an experienced insurance coverage lawyer, not just for when you need an advocate, but also to help you protect the privileged nature of your communications and to avoid many of the traps for the unwary in presenting your insurance claim. Counsel may work in the background, without revealing their involvement to insurers. Insurers typically do the same thing. Cooperate with the insurance company’s adjuster, but don’t forget that the adjuster works for the insurer—not for you. If you need an advocate, hire your own.

7. Follow the Policy to Preserve the Claim.

After notice of loss, most property policies also require that the insured later submit a sworn “proof of loss” to catalogue the damages. Although this is usually done after reaching agreement with the insurer on the amount of the insured claim, policies sometimes require the insured submit a proof of loss within a fairly short time after the event. Insurers are usually amenable to extending these deadlines if requested, but make sure that any extensions are memorialized in writing. 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.

8. Government Funds Might Be Available for Non-Profits Providing Critical Infrastructure and Essential Services.

Most people know that FEMA frequently provides funds to state and local governments and individuals. But FEMA and other government-based programs are also potentially available for certain not-for-profit organizations that provide critical infrastructure and essential services. Critical infrastructure and services

include: hospitals and other medical-treatment facilities, fire, police and other emergency services, power, water and sewer utilities, educational institutions, libraries, museums and zoos, community centers, senior citizen centers and day-care centers. The program and application process can be complicated and daunting—and strict time limits apply. But a successful applicant can see FEMA reimburse no less than 75 percent of the eligible costs for emergency protective measures and permanent restoration costs, including debris removal and infrastructure repair or replacement. FEMA does not, however, pay for business interruption losses and grant recipients must reimburse FEMA for any benefits that are duplicated by other sources such as insurance.

As destructive and disruptive as Hurricane Matthew may be, by following these tips, business and property owners should be well-placed to recover.

Pillsbury's Insurance Recovery & Advisory Group is a fast-growing, market-leading policyholder-side insurance group within one of the most well-respected global law firms headquartered in the United States. Pillsbury stands ready to assist with Hurricane Matthew recovery efforts.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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