

# Client Alert

November 2012

## Maximizing Recovery for Hurricane Sandy Losses

### A Message from the Hunton & Williams Insurance Litigation and Counseling Practice

This week's historic east coast hurricane serves as a timely reminder that we remain vulnerable to Mother Nature. The consequences may be direct - as in the case of property damage or related business interruption - or indirect, resulting from a supplier or partner suffering property damage that negatively impacts the company's business. Although the full impact of Hurricane Sandy is still to be determined, insurance coverage may be available for the resulting losses. Hunton & Williams Insurance Litigation and Counseling team is ready now to assist you with any insurance-related questions in the wake of Hurricane Sandy, or with regard to other insurance matters.

Many will continue to feel the Sandy's impact for weeks or even months to come. Corporate counsel and business managers, therefore, need to be prepared to deal with the consequences, including physical damage to business property as well as the disruption of normal business activities. Prompt and directed action to identify, notice and pursue recovery from insurers will help secure compensation and alleviate the financial impact of these losses timely and fully. Below, we discuss the insurance-related issues that are likely to arise in the immediate aftermath of the storm.

#### **Record Losses and Identify Insurance Policies**

Among other things, critical first steps following a loss include maintaining and preserving documentation of physical damage to property, tracking expenses incurred to mitigate or prevent further damage, and calculating and monitoring losses due to interruption of normal business activities. The loss claim should be tendered to all potentially applicable insurance policies. Be aware that sometimes policies issued to others — such as contractors, lessees, lessors, suppliers and customers — may also extend coverage for a company's benefit either as an additional insured or pursuant to an indemnification or assumed liability provision.

It should never be assumed that a loss is not covered by insurance; when in doubt, tender the claim and do so as soon as possible. Not only does timely tendering of the claim avoid any potential "late notice" objection, but it will also benefit the policyholder's claim by allowing it to pursue recovery when the insurance companies have the most resources available, e.g., local adjusters on the ground, claims people, emergency response teams and support personnel. Once the news cycle — i.e., the spotlight — has moved from the disaster, resources may not be as plentiful and carriers may not be as responsive.

Even government contracts may contain indemnification agreements. In most property or other first-party claims, the policy typically requires that the insured prepare a proof of loss. Under some circumstances this may be waived, but do not assume it will be. Document the scope and extent of the loss carefully. The entire loss experienced should be presented, including any expense to mitigate damage and protect property from further loss. Negotiate with insurers where necessary for extensions of times and tolling agreements, since many policies often include draconian time requirements that may trigger a forfeiture or compromise of benefits. Companies should make every effort to assemble a team of qualified professionals to prepare claims. Carriers are in the business of processing insurance claims and have an obvious interest in minimizing coverage. Chances are that the insured is not as accustomed to the

process and will be well served by engaging professionals familiar with the insurance claim process to assist in obtaining the full coverage available. In fact, the cost of such assistance is often covered by insurance.

### **Types of Losses for Which Insurance May Be Available**

Severe weather or other natural disasters can damage a business in many ways, including physical damage to facilities as well as lost business income from the inability of the policyholder or others to continue production or conduct normal business operations. Many times businesses can suffer losses to income even though there was no physical damage to the facilities, e.g., supply line interruptions, reduced demand from customers, etc. As described below, there may exist insurance coverage that may provide a resource to pay for these losses. Some forms of coverage available include the following:

- **Physical Loss or Damage to Insured Property**: Coverage for the cost to repair, replace or rebuild property that suffers physical loss or damage. Covered premises are usually listed and scheduled in the policy and may include not only buildings but also equipment and business personal property such as furniture, machinery and stock.
- **Wind v. Flood**: Most property policies will cover wind damage. Many property policies contain substantially reduced sublimits for flood damage. Some may not cover that type of damage at all. It is important, therefore, that policyholders avoid any unnecessary characterization of the “cause” of their loss, particularly where there may be multiple causes of loss or where the cause of the loss is simply unknown.
- **Expenses Incurred in Attempting to Mitigate or Stop the Damage**: Property policies typically cover expenses incurred in taking preventative measures to avoid loss. Indeed, many policies contain an affirmative requirement that the insured take steps to safeguard the property and prevent further damage.
- **Extra Expense Coverage**: Repairing or replacing damaged property is not the only expense item when property is damaged. Often the cost of operating the business also goes up during the time when the business is affected by the storm or its aftermath. Extra expense coverage is intended to indemnify the insured for above-the-norm expenses caused by the insured event. Examples may include the cost of a generator when electricity is lost or costs incurred to operate at a temporary location.
- **Business Interruption Coverage**: Property policies generally cover lost income or profits caused by the interruptions and often slowdowns of business activities, due to physical damage to the insured’s property. The basic purpose of the coverage is to make the insured whole during the period it takes to rebuild or replace the property destroyed.
- **Contingent Business Interruption Coverage**: Even if a company’s own property has not been damaged, its business may be interrupted by damage to the property of others, such as suppliers or other business partners. In such circumstances the company’s lost income often is covered by contingent business interruption coverage.
- **Orders of Civil Authority**: Coverage may also be available when business income is lost as a result of governmental directives preventing or restricting access to property. These losses may be recoverable even if the company’s own property has not been damaged.
- **Ingress/Egress Coverage**: Similarly, many policies cover losses when ingress to or egress from a covered property is prevented or hindered by the event. This coverage may come into play in the event of road closures, the closing of mass transportation and other transportation problems.

- **Service and Utility Interruptions:** Losses and expenses caused by power, water and telecom outages can also have a significant impact on business operations and resulting losses may be covered under property insurance policies.

The precise terms of the policy and applicable law govern the existence and extent of coverage. In addition, policies are often endorsed or contain exclusions that may expand or reduce coverage. Some applicable limitations on policies include sublimits on certain losses that limit the total available insurance for a particular damage, exclusions for flood or water damage, earth movement exclusions and government action exclusions that may not permit recovery for interruptions in business where government authorities limit access, etc. The burden is always upon the carrier to prove the terms and applicability of any exclusion of coverage in a policy. Exclusions are read narrowly and where found to be ambiguous or not sufficiently notorious in the policy will be disregarded or construed in the light most favorable to the insured and in favor of coverage. Insureds are always best served by a careful analysis of the terms of their policies, the controlling law governing their insurer's obligations and a precise documentation and presentation of their loss during the claim process.

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Our insurance recovery attorneys assist policyholders in securing the full benefits to which they are entitled in the event of any type of loss, including losses to property and income caused by severe weather, such as Hurricane Sandy.

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