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Expert Analysis

What Corporate Policyholders Need To Know About Hurricane Coverage

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Harvey. Irma. Jose. Maria. Each week over the past few months there has been a powerful hurricane menacing the Caribbean and the Southeast destroying everything in its path. Property is damaged as the storms make landfall, and the affected areas are paralyzed both before the storms hit as state and local governments brace for impact with mandatory evacuation orders, and after due to road closures, widespread power outages, and individuals devoting all their time to accounting for family and friends and beginning to rebuild. An integral part of the rebuilding process involves assessing the availability of insurance coverage for property that was damaged and business that was lost.

When it comes to insurance coverage for a hurricane, the most important steps are taken before the storm. When purchasing property insurance, it is important to assess the risk of hurricane damage to your property and have a clear understanding of the coverage that you will have in place in the event of a hurricane. Ask your insurer or broker what the coverage would be should the worst happen. Often, the insurer or broker can be bound by the interpretation of the policy it provided before the storm hits.

Policyholders should also know what to look for when reviewing hurricane coverage. Most commercial property insurance policies are written on an "all-risk" basis, meaning they provide full coverage for all perils and types of property damage unless specifically excluded. However, even where not excluded, the policyholder will have to be cognizant of whether the peril or type of property damage would be subject to a sublimit, i.e., a

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lesser limit than the full policy limit, as that is a common way that insurers severely limit their exposure. Importantly, those exclusions and limits can be tied to peril definitions in the policy, which can significantly affect the policyholder's recovery for hurricane-related damage. Hurricanes can cause damage through powerful winds, battering rains, or rising water from wind-driven storm surge, and coverage for each part of the hurricane can vary depending on what damage is defined as "Flood," which is usually excluded or sublimited, and "Windstorm" or "Named Windstorm," which may have full or additional coverage.

For example, some policies have definitions of "Named Windstorm," or similar terms such as "Weather Catastrophe Occurrence," that encompass all damage from a hurricane, including both wind and water damage, while other policies include water damage associated with a hurricane, such as "storm surge" or "wind-driven water," in the definition of "Flood." Courts have determined that when a policy provides coverage for "Named Windstorm" or an equivalent term as a peril separate from flood, and the policy definition of named windstorm includes water damage associated with a named windstorm, a policy's limitation on "flood" damage will not apply to limit the available coverage for damage caused by storm surge associated with a named windstorm. See, e.g., *N.J. Transit Corp. v. Certain Underwriters at Lloyd's, London*, No. ESX-L-6977-14 (N.J. Super. Ct. Law Div. Aug. 24, 2017). See also *SEACOR Holdings v. Commonwealth Ins.*, 635 F.3d 675 (5th Cir. 2011); *Pub. Serv. Enter. Grp. v. ACE Am. Ins.*, 2015 WL 1384325 (N.J. Super. Ct. Law Div. March 23, 2015). This is so even though the policyholder's property could be considered "flooded" as that term is generally used because the damage was still caused by the peril of named windstorm. However, when policies do not contain such language, and flood is not a separate peril from named windstorm or policies' flood definitions encompass water damage from a named windstorm, courts have found flood sublimits did apply to hurricane water damage. See generally, e.g., *Six Flags v. Westchester Surplus Lines Ins. Co.*, 565 F.3d 948 (5th Cir. 2009); *Northrop Grumman v. Factory Mut. Ins.*, 563 F.3d 777 (9th Cir. 2009).

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Moreover, while the flood sublimit issue is one that has arisen many times and may have the largest consequences in terms of limiting recovery, it is also important to understand what other sublimits may apply to a hurricane loss—for example, sublimits for "extra expense," interruption of utilities ("service interruption"), loss of business ("business interruption"), or ability to access one's property due to government order ("civil authority"). Each of these limits needs to be analyzed prior to binding of coverage, as they frequently arise in the case of a devastating hurricane.

Another area where the determination of what caused the damage and the operation of the policy language can be key is the application of deductibles. Recognizing the destructive power of hurricanes, many property insurance policies contain high deductibles specifically for named windstorm, requiring the policyholder to sustain more damage in order to trigger coverage. For example, a policy that insures $50 million in property may have a relatively low deductible for most other losses, such as $50,000, but can contain a separate deductible for damages from a named windstorm that is based on a percentage of the total insured value, and in that case, a 5 percent deductible would result in a $2.5 million deductible that the policyholder must pay before accessing any coverage.

No two losses are the same, and given the amount of property insurers in the marketplace, few policies have identical language. Every claim will present unique issues and will be governed by the facts of the loss and the policy language at issue. It is important to give prompt notice of a loss to your broker or property insurer and, if resources permit, hire coverage counsel early. Effective counsel can get claims paid quicker, turn an insurer's inclination from denial to payment, and best position the policyholder in the event litigation becomes necessary.