

## Insurance Recovery



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## Insurance Recovery for Losses Related to Hurricane Harvey

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### **INSURANCE FOR PROPERTY DAMAGE AND BUSINESS INTERRUPTION LOSSES**

Businesses and communities throughout Texas and the Gulf Coast are now dealing with the catastrophic effects of Hurricane Harvey. Harvey is unique because it quickly and unexpectedly transformed from what was predicted to be a smaller-scale storm to a Category 4 hurricane before making landfall, and then remained nearly motionless for days, unlike past havoc-causing storms like Superstorm Sandy and Hurricane Katrina. These circumstances left many major businesses and facilities in the storm's expected path with significantly less time to prepare, and in some cases shutdown operation, than would ordinarily be expected. The long duration of the storm has caused much more severe and wide spread flooding than past storms in the area.

Adding a further complication for area businesses and residents is the fact that a recent Texas statute, the so-called "Hailstorm Bill," takes effect on Friday, September 1, 2017. Among other things, the law reduces the statutory penalty from 18 percent to 10 percent on insurance coverage claims filed after the effective date. Therefore, in the midst of nearly unprecedented rain and flooding, Texas Gulf Coast residents face an almost immediate deadline to submit their insurance claim if they want to avoid some of the more insurer-friendly aspects of the Hailstorm Bill.

### **IMMEDIATE EFFECTS OF HURRICANE HARVEY**

As Hurricane Harvey intensified, industrial activity slowed substantially along the Gulf Coast as energy companies brought workers in from oil platforms and ships evacuated ports ahead of Hurricane Harvey. As of August 24, almost 10 percent of all Gulf oil production was temporarily cut off. That is the equivalent of 167,000 barrels of oil a day, according to the U.S. Bureau of Safety and Environmental Enforcement. The eye of the storm made landfall close to the Corpus Christi region, where there is an assortment of refining and petrochemical facilities.

At least one major cracker in Texas was shut down in anticipation of the hurricane. Cracking, as the name suggests, is a process in which large hydrocarbon molecules are broken down into smaller and more useful ones. The cracking products, such as benzene, ethene, propene, and certain other alkenes, are used by many other businesses to make several important chemicals. Shutdowns for any extended period of time may create significant contingent business interruption losses.

Property and businesses may be severely damaged by wind, rain, and the loss of electricity, with some unable to reopen for days, or longer. Even once businesses reopen, the storm's destruction may prevent employees from traveling to work. In addition, municipalities may

experience decreased tax revenues from business closures. Thus, the economic impact of storm-related losses for businesses and municipalities combined may be significant.

As the situation stabilizes in the days and weeks after the storm and the focus turns to economic recovery, businesses will begin to examine their operations, assess their losses, and look to their insurance for compensation. Many businesses and municipalities may have a valuable asset available in the form of property insurance that can play an important role in helping them recover from the devastating storm. This insurance may provide coverage not only for physical damage to and loss of property, but also for financial losses arising from an inability to conduct business (either at all or at the same levels as before); the extra expenses incurred in dealing with the effects of the storm, including expenses incurred in advance to minimize or mitigate any damages and losses; and the costs incurred in establishing the extent of the losses.

## SCOPE OF LOSSES AND COVERAGE

It is critical that policyholders assess as quickly as possible (i) the extent of their losses and (ii) the scope of coverage for those losses. Insurers will request detailed proof of the loss claimed under the policy and documented evidence of the expenses incurred in responding to that loss. Policyholders must fully understand the scope of coverage afforded by their policies to maximize the potential for recovering all covered losses.

## POLICY CONDITIONS AND REQUIREMENTS

Policyholders should be wary of their policies' potential time traps. For example, a policy may obligate the policyholder to provide the insurer with notice of a loss "as soon as possible" or "as soon as practicable" after a loss or other insured event. Some policies require that notice be given in as little as 30 or 60 days. The consequences of failure to give prompt notice differ depending on the type of policy and the jurisdiction. But, a failure to give prompt notice may completely bar a policyholder's claim.

## APPLICABLE INSURANCE POLICIES

Several different types of insurance policies may provide insurance for storm-related losses, but the most common are first-party property policies—including Commercial Property, Marine Property, and Marine Open Cargo, just

to name a few—that protect a policyholder's place of operations and inventory and provide coverage for lost or damaged property. Many property insurance policies are sold on an "all risk" basis, meaning that they cover losses to insured property caused by any peril not expressly excluded. Once a policyholder shows that it has suffered a loss under a broad all-risk policy, the burden of proof shifts to the insurer to show that the loss is not covered. By comparison, a second type of property insurance—a "named perils" policy—covers only those perils expressly listed. Both types of policies may contain coverage exclusions. It is important for a policyholder to carefully review its policies to determine if the specific loss is covered.

## ADDITIONAL COVERAGES, INCLUDING BUSINESS INTERRUPTION AND EXTRA EXPENSE

In addition to covering property damage, many property policies also provide some or all of the following coverages designed to recover non-property storm losses:

**Business Interruption:** frequently reimburses the policyholder for the amount of gross earnings minus normal expenses (that is, its profits) that the policyholder would have earned but for the interruption to its business. Business interruption coverage sometimes, but not always, requires that "interruption" result from damage to covered real or personal property. Policyholders, for example, have obtained reimbursement under such coverage when widespread disasters such as Hurricane Katrina and the 9/11 terrorist attacks caused business interruption. Business interruption coverage provisions typically apply even when a policyholder is forced to relocate in order to maintain business operations or to minimize its overall loss.

**Service Interruption:** provides coverage for losses that the policyholder incurs from interruption of utility services that result from physical damage to the property that supplies the utility. Property policies frequently provide this coverage, although they may require that the interruption of service last a minimum amount of time. The coverage may be subject to separate and lower limits of insurance than other business interruption coverages. Service Interruption coverage can vary widely with regard to what types of utilities are covered. Depending on the specific Service Interruption coverage purchased, it may apply

to several services, including water, communications, and power supply. With no electricity, for example, there may be a massive gas shortage (even if stations have gas, with no power they cannot pump it). Many in New York, New Jersey, and Connecticut experienced this after Superstorm Sandy, meaning that goods and services could not get delivered and employees could not get to work.

**Civil Authority:** protects the policyholder from losses caused by the inability to access its premises when a civil authority denies such access because of covered damage to, or destruction of, property belonging to third parties. Some civil authority coverages require physical damage to the policyholder's own premises; others do not. A "civil authority" for purposes of this coverage may extend beyond federal and state governments. For example, after the 9/11 terrorist attacks, some policyholders successfully argued that the baseball commissioner's cancellation of games constituted an order of a civil authority. Regardless of the "authority" involved, civil authority-related event cancellations may be a significant area of loss in the metropolitan areas such as Houston and Corpus Christi following this storm. There have already been evacuation orders issued in advance of the storm that are likely orders of civil authority for coverage purposes—and more such orders are likely.

**Ingress/Egress:** similar to Civil Authority coverage, Ingress/Egress coverage may be available when access to ("ingress") or from ("egress") an insured's premises has been prevented or made more difficult because of storms. Unlike Civil Authority coverage, no governmental act is required to trigger this coverage. Many policies cover losses when "ingress" to or "egress" from insured premises is "prevented" because of a covered peril. In the aftermath of the storm, many businesses may be unable to operate because millions of employees cannot get to work. Many roads might remain closed or otherwise blocked for days.

The availability of Ingress/Egress coverage varies greatly from policy to policy. Frequently, a policy will cover the loss sustained by an insured "due to the necessary interruption of the Insured's business due to prevention of ingress to or egress from the Insured's property, whether or not the premises or property of the Insured shall have been

damaged" if the interruption resulted from damage of a type insured against by the policy.

**Contingent Business Interruption:** typically covers two types of business interruption. First, it protects against economic losses caused by a "direct" supplier's inability to get its goods to the insured due to damage to, or destruction of, the supplier's property by an insured peril. Second, it protects against economic losses caused by damage to or destruction of a customer's property that prevents the customer from accepting the insured's products. Accordingly, businesses located nowhere near the Gulf Coast may still suffer insured losses resulting from the storm. All businesses that use the cracking products discussed above may have significant Contingent Business Interruption losses.

**Extra Expense:** indemnifies the insured for reasonable and necessary extra or increased costs of business operations above the norm because of a peril insured against. It may include coverage for, among other things, costs incurred for the insured to temporarily continue business operations "as normal as practicable," such as the temporary use of the property or facilities of others.

## DEDUCTIBLES AND POLICY LIMITS

Experience tells us that when a policyholder makes a coverage claim, insurers may seek to reduce their exposure. In response to claims for storm-related losses, which are often more clearly covered than claims stemming from other weather events such as floods, insurers may rely on deductibles and policy limits to pay less.

A "deductible" is the amount that the policyholder must pay toward its losses before recovering from the insurance company. The deductible amount and whether it applies on a "per occurrence" basis may significantly impact an insured's insurance recovery following a storm with many facets (such as wind, rain, flying debris) like the storm that is expected to impact the Gulf Coast. Also, some policies call for a complex calculation tied to a percentage of the value of the insured premises to determine a policyholder's deductible. Policyholders should pay particular attention to make certain that it is not paying a greater deductible than what the policy requires following storm losses.

Property insurance policies also limit the dollar amount that an insurer will pay for a covered loss (i.e., limit of liability). A “per occurrence” limit is the maximum amount that the insurance company will pay for one particular incident. An “aggregate limit” is the maximum amount the insurance company will pay for the entire policy period. A “sublimit” is any limit of insurance which exists within another limit. For example, the policy may have sublimits for “earthquake,” “flood,” or “windstorm” that may limit recovery for loss arising out of such events to a specified dollar limit per occurrence. Policyholders should not necessarily accept an insurer’s determination of what policy limit applies. As we learned in the aftermath of Superstorm Sandy, insurers’ efforts to limit coverage on the ground that it was a “named storm” failed in some cases because losses were caused by a combination of weather events in certain areas of the country. Also, insurers frequently seek to reduce a policyholder’s claim for economic loss by improperly applying sublimits that are meant for physical damage losses.

## MAXIMIZING INSURANCE RECOVERY

Pursuing an insurance claim following weather events often is a complex and challenging process, especially when management and employees are faced with post-disaster challenges at work and home. Even sophisticated businesses unknowingly commit errors in assessing, documenting, and quantifying their losses, or when interpreting their insurance policies, that later limit or even bar potential insurance recovery. Policyholders should carefully review their coverages, comply with all policy conditions, and strategically approach their insurance claims to maximize coverage and avoid pitfalls.

## INSURANCE-RELATED CHECKLIST FOR INDIVIDUALS

The storm may significantly impact individuals, as well as businesses. The following is a non-exhaustive checklist for individuals to help maximize insurance recovery:

- Locate a copy of your policy or request a copy from your agent or broker.
- Consider all possible insurance policies that may be implicated by your loss.

- Provide written notice of your loss to your insurance company.
- Take photographs and record videotape, if possible, to document property damage or loss.
- Prepare an inventory of damaged or lost property.
- Keep receipts for all expenses incurred to protect or repair your property and for any additional or extra living expenses.
- Provide your insurance company with a list of all expenses.
- Review your policy to determine if there are any procedural requirements or deadlines.
- Submit proofs of loss and other documents required by the policy.
- Request partial or advance payments from your insurance company as needed.
- Keep notes of oral communications with your insurance company, agent, or broker.
- Seek legal advice as appropriate.

## IMPORTANT INSURANCE-RELATED CONTACT INFORMATION FOR INDIVIDUALS

### State Insurance Department:

- Texas: (800) 252-3439

### Major Insurance Companies:

- ACE: 1-800-433-0385
- AIG: 1-800-244-0304
- Allstate: 1-800-255-7828
- AMICA: 1-800-242-6422
- Chubb: 1-800-252-4670
- Continental (CNA): 1-877-CNA-ASAP
- Farmers: 1-800-435-7764
- Geico: 1-800-841-3000
- Hartford: 1-800-843-7006
- Liberty Mutual: 1-800-2-CLAIMS
- Safeco Insurance: 1-800-332-3226
- State Farm: 1-800 SF CLAIM (1-800-732-5246)
- Travelers: 1-800-CLAIM33
- USAA: 1-800-531-8222

## OUR FIRM

Blank Rome LLP's insurance recovery practice works with policyholders in a wide range of industries and takes a creative and business-minded approach to insurance. Our strength lies in finding coverage where others are not able to. With decades of proven success in recovering billions on innovative theories, our clients—from Fortune 50 companies to the most prominent consulting firms and law firms—turn to us for our analysis, experience, reputation, and record of success.

Attorneys in our national insurance recovery practice have been industry leaders for more than 30 years. We break new ground, making new law for our clients and shaping it for others with precedent-setting litigation, mediation, arbitration, and settlement strategies that lead to landmark rulings, new types of coverage, and major advances. And, our novel legal theories are widely recognized by both the courts and commentators.

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