

INSURANCE CLAIMS AFTER HURRICANE KATRINA

By Mark D. Mese and Toss A. Rossi

Hurricane Katrina will undoubtedly go down in history as the worst natural disaster to hit the United States. The current estimated cost to repair damage from Hurricane Katrina has reached \$50.0 billion, much of which may be covered by insurance. Hurricane Katrina will have enormous impact on policyholders and their insurers in Louisiana, Mississippi, and Alabama. Policyholders will need to act carefully and in some cases promptly to protect their rights under insurance policies providing coverage for environmental claims, business interruption claims, property loss claims, and general liability claims.

Environmental Claims.

Hurricane Katrina's rains, floods, and wind damage have caused a multitude of small and large environmental accidents. Businesses that are generally concerned with environmental accidents—chemical plants, manufacturing companies, oil and gas producers, and gasoline stations are not the only businesses that may be exposed to environmental claims. Car dealerships, hardware stores, pest control companies, dry cleaners, and any business which may house, store, or sell chemicals of any kind are subject to liability for environmental accidents. Most current environmental coverage is written on a claims made basis and requires that notice of an environmental accident be given within 30-days of the accident.

Property Damage.

Damage to property caused directly by wind and water (which did not carry chemical or environmental type damages) should be covered by property insurance policies and/or flood insurance. Flood insurance may be provided as an endorsement to a general property policy; in some cases, a separate flood policy may be necessary. Documentation of the type of property damage sustained is important particularly where multiple policies providing coverage are involved or where a single policy has multiple deductibles and multiple coverage limits.

Insurers providing wind and rain property damage coverage may claim that all or most property damage was caused by rising waters/floods. It is also possible that carriers providing flood insurance will take the position that at least some of the damage was caused by wind and rain. The “finger pointing” in a dispute often delays payments and resolution of claims and may lead to litigation. Carriers may also attempt to allocate large losses to particular portions of a policy that have the lowest policy limits.

Business Interruption Coverage.

Coverage is generally incorporated as a rider or endorsement to property policies although stand alone coverage is available. Business interruption claims are often difficult to quantify in the early stages of a disaster. Determining how long the business is interrupted, how much it will reasonably cost to get the business running again, and the amount of lost profits are issues which are often disputed by the insurance carriers. Generally, physical damage to a business property is needed to trigger business interruption coverage. One exception to this requirement is the loss of use of a property due to an order by a civil authority. For example, buildings located in New Orleans which may not be damaged may have limited coverage for business interruption due to the order to evacuate.

General Liability Coverage.

General liability coverage may provide additional coverage for third-party claims arising out of damages caused by Hurricane Katrina. General liability policies provide broad coverage and should be reviewed before making claims under other policies providing specific coverage.

Notice and Proof of Loss.

Before noticing an insurer, a policyholder should carefully review all policies to determine notice requirements and to become familiar with the policy’s terms and conditions. Statements contained in notice letters can be used by the insurer to trigger or deny coverage. Such statements under one policy might affect (but not necessarily provide) notice under other policies. Specific attention should be given to the number of days between an occurrence and when a claim must be made. This is particularly true in environmental claims. On a claims-made policy, the ending date of the policy is important. Failure to make a claim during the policy period on a claims-made policy may destroy a policyholder’s right to make a claim on the policy.

Conclusion.

On large and/or complex claims, especially environmental claims and business interruption claims, it is often advisable to seek professional help from coverage attorneys, accountants, environmental consultants, and appraisers to develop claims and to provide support during the ongoing and often lengthy claims process. Coverage attorneys and supporting experts should be considered as a part of making any large or complex claim on one or more policies. Louisiana provides regulations and rules on claims handling and provides certain protection to policyholders.

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