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Matthew's Message: Maximize Insurance Recoveries After a Major Weather Event

From the Experts

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Over the past 15 years, the United States has witnessed some of the most powerful and destructive storms ever documented. There was Hurricane Katrina in 2005, Hurricane Ike in 2008 and Superstorm Sandy in 2012, just to name a few. Hurricane Matthew is the latest tragic reminder of the power of Mother Nature. In the Caribbean, Matthew ravaged Haiti and the Dominican Republic, leaving more than 1,000 people dead. Here at home, although the worst was avoided, over 40 people were killed, and property from Florida to North Carolina suffered an estimated $10 billion in damages.

A properly planned, implemented and maintained insurance program is the very best way for a business to shield itself from the devastating financial impact of a severe weather event. Yet, a surprising number of in-house lawyers and top executives fail to give insurance the attention it deserves. Rather than making insurance policies and coverage professionals the centerpiece of their crisis management plans, many C-suites simply "buy and shelve" their policies. More importantly, they relegate risk managers, coverage lawyers, insurance brokers and forensic accountants to the "we'll call you if we need you" pile.

Failing to recognize your risk profile, comprehend your policy terms and understand the "value add" of insurance experts will virtually guarantee that your business is not fully protected in the wake of a natural disaster. And so, from the insurance perspective, Hurricane Matthew's message is clear: No business can stop a hurricane, but a prepared business can minimize a storm's financial impact by maximizing the resulting insurance recovery. Here are six simple tips for doing just that.

Steps to Take Before a Storm

1. Review, Understand and Renegotiate Your Policies

Far in advance of a severe weather event, it is essential to review, understand and, if necessary, update your insurance policies so that your business is fully prepared and protected. When analyzing your insurance portfolio, keep in mind that there are many types of policies that could respond in the wake of a hurricane. By way of illustration, commercial general liability, cyber liability, marine cargo and inland marine policies all have the potential to provide coverage. However, your business's first-party property policy (commonly referred to as an "all risk" policy) is the line most likely to respond, as it generally offers the broadest coverage for natural disasters. First-party property policies cover damage to a company's physical plant. They also provide coverage for other types of storm-related costs and expenses. For example, a typical all-risk policy will provide coverage for pre-storm preparations, loss mitigation, business income losses (including losses caused by damage to your suppliers or by a power interruption), extra expenses, debris removal and blocked access to company facilities.

During your review it is also important to recognize that policies can include specific provisions that operate to exclude large categories of otherwise covered loss. One common exclusion in first-party property policies precludes coverage for damage related to flooding and "storm surge." As a result, even though a policy may purport to cover hurricane-related losses, if those losses are caused by rising water, then coverage can be eliminated entirely. Some policies also contain "anti-concurrent causation" provisions that are designed to broaden the reach of policy exclusions. Insurers rely on these provisions to argue that if multiple causes contribute to a given loss and one of those causes is excluded from coverage, then the entire loss is excluded.

Once hurricane season begins, it likely is too late to renegotiate your coverage. Consequently, a comprehensive review should be undertaken at the time of policy purchase or renewal. Coverage counsel can help you analyze and pinpoint gaps or inconsistencies within your policies so they can be timely addressed.

2. Develop a Contingency Plan

After ensuring that your insurance coverage is in place, you should review—or create—a disaster contingency plan. This, too, should be done well in advance of a potential weather event.

A comprehensive contingency plan should include up-to-date insurance policy files, detailed inventories of all property (equipment, electronics, stock), photographs of important and valuable property, a list of suppliers that provide critical goods and services, and contact information for all personnel. It should also establish a dedicated disaster response team. The ideal team includes not only company leadership and risk management personnel, but also outside insurance coverage counsel, brokers and forensic accounting experts.

As part of your planning efforts, you should consider creating a checklist of necessary steps to obtain insurance coverage in the event of a storm-related loss. Your list should, at the very least, include:

- A schedule for providing timely notices of claim to all insurance companies.
- Protocols – such as a daily diary—for recording all actions taken starting from the date of the loss.
- A team and a plan for analyzing your insurance coverage to determine what coverages were triggered by the loss, and whether you are subject to any sublimits.
- A calendar for recording all deadlines to file proofs or statements of loss required by your policy, time periods for completing repairs and dates by which a coverage lawsuit must be filed.

3. Be Proactive

Once a storm is on the horizon, a “hands-on” approach is crucial. You should do as much as you can to protect your company’s material assets by boarding up windows and doors, moving raw materials and finished products to higher ground and relocating portable property. Taking these precautionary steps is good not only for your business, but also for your subsequent insurance claim. There are a number of reasons for this. First, loss mitigation can be a prerequisite to coverage. Second, proactive efforts may preempt potential arguments by your carrier (such as attempts to characterize all of your losses as “flood-related”). Finally, many policies will actually reimburse storm preparation costs.

Steps to Take After a Loss

4. Promptly Notify Your Carrier

All policies require notice to the insurer following a loss, and most provide specific details regarding the timing and manner of that notice. It is in your best interest to follow these requirements strictly, and to give notice as promptly as possible. In certain circumstances, failure to do so may result in a forfeiture of coverage. This is another area where advance preparation pays dividends, because, ideally, your contingency plan has previously identified: (i) all potential policies that may be implicated; (ii) the requirements for providing notice under each such policy; and (iii) the team member who is responsible for providing notice.

5. Document Your Losses

The next step in maximizing your coverage involves carefully documenting all property damage and resulting expenses (this, too, harkens back to the contingency plan). In addition, if your business is forced to shut down, you may be able to seek coverage for losses resulting from the interruption of your operations. Once you have a solid accounting of all losses and expenses, submit them to your insurance company, making sure that you are complying with any policy conditions. Additionally, be sure to document all communications with your carrier, so that you have a full record in the event of a subsequent coverage dispute.

6. Seek Help From Professionals

The period following a significant weather event is extremely important from an insurance coverage perspective. Understanding the applicable policy provisions, comprehensively documenting losses, tendering a formal proof of loss and interacting with the carrier’s representatives can be a complicated and confusing process. And mistakes in the early stages can have a devastating impact on your ultimate recovery. Consequently, it is essential to enlist the assistance of coverage counsel, insurance brokers and forensic accountants from the very outset.

It is often said that luck favors the prepared. This adage is particularly apt when applied to corporate policyholders seeking to protect their businesses. Being prepared, knowing the coverage and relying upon experts are the keys to maximizing insurance recoveries in the wake of a natural disaster. That is Hurricane Matthew’s essential message, and one that every in-house counsel should heed.

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