



## Lowenstein Sandler's Insurance Recovery Podcast: Don't Take No For An Answer

### Episode 22 - The Calm Before and After the Storm: How to Maximize Insurance Recovery for Catastrophic Weather Events

By [Lynda A. Bennett](#) and [Eric Jesse](#)  
SEPTEMBER 2021

---

**Kevin Iredell:**

Welcome to the Lowenstein Sandler podcast series. I'm Kevin Iredell, Chief Marketing Officer at Lowenstein Sandler. Before we begin, please take a moment to subscribe to our podcast series at [lowenstein.com/podcasts](https://www.lowenstein.com/podcasts). Or find us on iTunes, Spotify, Pandora, Google podcast, and SoundCloud. Now let's take a listen.

**Lynda Bennett:**

Welcome to Don't Take No for an Answer. I'm your host, Lynda Bennett, Chair of the Insurance Recovery Group here at Lowenstein Sandler. So as we say goodbye to summer, and we're getting back into the groove of school schedules, and we're starting to embrace the arrival of pumpkin spice everything, companies need to start preparing for the upcoming hurricane season and the severe weather events that accompany winter. So as many corporate policy holders know all too well, when mother nature strikes, she moves fast and furious leaving significant property damage and business interruption in her wake. That's the time that most companies turn to their insurers with the hope and expectation that their premium dollars have been well spent and all is going to be well because their insurance adjuster is going to show up on the scene with their checkbook in hand. However, the reality is that all too often, there's a misalignment between what the policy holder's expectations are and what the insurer's willingness is to pay on a particular claim.

So let me be a little bit more blunt because that's my way. Insurers like to collect premiums, but they don't like to pay full value for their claims. So in today's episode, we're going to explore these steps that policy holders can and should take when a catastrophic weather event is on the horizon to get full value for their claims. And as we like to do here at Don't Take No for an Answer, we're going to keep it practical and give actionable advice. In order to deliver on that promise, I've invited two professionals who have years of experience unlocking the keys to the insurance kingdom after the storm.

My partner, Eric Jesse has helped policy holders recover insurance proceeds for both property damage losses and business interruption claims. And we have Stef Jedra here with us today. She's a CPA and a senior manager with Markham.

Stef brings her secret decoder ring for business valuation and loss calculation to all of her meetings and she supported efforts to secure insurance recoveries for years. So welcome, Eric.

**Eric Jesse:** Thank you. Great to be here.

**Lynda Bennett:** And welcome, Stef.

**Stefanie Jedra:** Thanks, Lynda for having me.

**Lynda Bennett:** All right. Great. So why don't we just jump right in and get to what are the steps that policy holders need to take before the storm arrives to mitigate their losses and maximize their insurance recovery? Because usually we have some advanced notice that these events are coming. So Eric, what do we need to do to get ready?

**Eric Jesse:** Yeah. So it's certainly in everyone's interest, both the policy holder and the insurer's interest to try and minimize any expected or potential damage to the possible. So policy holders should try and protect vulnerable property if they can, whether that includes moving property that's stored outdoors, indoors, sandbagging, boarding up windows, elevating property that might be at ground level if there's a flood risk. But basically the advice is to act as if you're uninsured to try and protect your property. And because insurers also recognize that these preventative efforts are beneficial to all, many property policies will cover what are called loss prevention expenses, but as is the case with many policies, the devil's in the details. So first make sure that your policy, that your property policy has this type of coverage. And second, make sure you're aware of any notification requirements. To access coverage, you might have to provide the insurer with advanced notice of your preventative measures or notice within a few hours of doing so.

**Lynda Bennett:** What about whipping out our video camera? Because one of the biggest losses that our clients experience can be inventory. So you think it's the best practice maybe to take a video of the warehouse before the roof gets ripped off and the rain starts coming in?

**Eric Jesse:** Yeah, absolutely. That's going to be something you want to do before and after to show the effects of the damage.

**Lynda Bennett:** Great. All right. So once the event comes and goes and corporate representatives are able to get back onto the site, what are the most important things that policy holders should do within that first 24-48 hours to assess the loss and document it?

**Eric Jesse:** So once the storm passes, there's really a host of things that the policy holder needs to do almost simultaneously. One is give immediate notice of the loss to the insurer. The insurer will appoint an adjuster who can be your point person as you undertake any repairs and remediation and you want to keep the adjuster apprised of what you're doing. Also, when you're providing notice, you don't want to specify a specific type of cause or loss. You want to avoid describing the claim in a manner that could walk right into an exclusion. So just describe the damage sustained. The other thing you want to do is continue your mitigation post loss. So take the necessary steps to protect persons and property from further damage and injury. These temporary, but immediate steps can also be covered under the policy. The term of art is an

expediting expense where the policy could cover temporary or expedited repairs.

**Eric Jesse:** And to the extent you can continue to operate, mitigate losses by seeking alternative suppliers or sources, if that's necessary for continuation. Also make sure that the loss and the damage property is documented, particularly if immediate measures need to be taken to protect property or persons. That means photographing and videotaping everything. If possible, before the repair occurs. These records are going to be critical to preparing the proof of loss and proving the loss, and also to prevent the insurer from asserting some sort of prejudice if the insurer's inspection cannot occur before the site is altered. Also don't discard any damaged property until the adjuster arrived on site. So he or she can see that with their own eyes. And then another critical item just in general is to be aware of policy deadlines. Many of these policies have tight deadlines to submit a proof of loss or to potentially bring a lawsuit if there's a coverage dispute. So don't let those deadlines slip. And if they are going to slip, make sure you get a written extension from the insurer if necessary.

**Lynda Bennett:** So before I turn over to Stef to give her a question though, let me back up Eric, because you've mentioned the adjuster a couple of times, and I think it's important for our listeners to understand the difference between the adjuster, the insurance appointed adjuster and this other group that we've heard about called public adjusters. So can you just spend a minute or two talking about the difference and whether our clients should consider bringing a public adjuster in on their behalf?

**Eric Jesse:** Sure. So the insurance company will have their own claims adjuster that will be the point of contact for the insurer. Obviously, the adjuster there works on behalf of the insurance. So you want to be very careful what's communicated to that adjuster because anything we tell them can be used against the policy holder to potentially deny the claim. A public adjuster will work on behalf of the policy holder. And they're typically paid based on a percentage of the amount they're able to recover from the insurer. And oftentimes, they can be a point of contact to deal with the insurance company's adjuster. So they will review the loss and they will coordinate the presentation of the loss and be basically the point of contact for the policy holder.

**Lynda Bennett:** Great. So Stef, at what point do you typically get involved in the process and how does that happen?

**Stefanie Jedra:** So we can get involved at different times, depending on both the business and the details of the policy. Sometimes we're engaged by a business to assist in preparing their claim for lost business interruption. We can assist the client with compiling the necessary information and presenting any analysis that would be necessary to calculate their claim or their policy. Other times we're engaged by the insurance adjuster to assist in reviewing a claim that has already been prepared by either a policy holder or a separate forensic accountant.

**Lynda Bennett:** So you're going to come in and kick the tires after either the insurance company or the policy holder has put the claim forward, you guys come in to do the high level back check review on the amount of the loss.

**Stefanie Jedra:** Yeah. So the amount of loss and also reviewing the supporting documentation or any other information that might be necessary to adjust the conclusion if it's necessary.

**Lynda Bennett:** So what are the most important data points... Let's say that you're engaged by a corporate policy holder who's looking to quantify their business interruption loss, what are the most important data points that you need to from the client before you can do your work?

**Stefanie Jedra:** So the most important piece of information is going to depend on the policy, depending on what the policy outlines as the calculation for the loss profit or loss earnings. Whichever the calculation outlines the policy will have specific components that are necessary to calculate the loss. And that information will be maintained in the financial statements, tax returns and books and records generally of the company. So we'll want to look at that information to figure out exactly what we need to align with the calculation that's outlined in the policy.

**Lynda Bennett:** So let's just reinforce the point that Eric made earlier and that is one of our core values here at Don't Take No for an Answer, which is the words matter. Not all policies are created equal and Stef, I think you just made the point that even the way you go about calculating the loss will very much depend on what the policy terms are. All right. So Stef who pays for your services?

**Stefanie Jedra:** So that also depends. It's the accountant's favorite answer-

**Lynda Bennett:** And lawyers too. That's why we get along so well.

**Stefanie Jedra:** So true. So it always depends. It depends on when we got involved and what the policy outlined. Each policy is different obviously, like you said, the words matter. So it depends on what the policy says who pays the services.

**Lynda Bennett:** Yeah, I think that's an important point for our listeners to know though that some of these policies actually include and expect a payment for a professional, such as yourself to help value that loss. So Eric, tell me, how complicated does this get after Stef has done her work and has come up with the calculation? How hard is it to get this claim presented and paid? Do you need to borrow Stef's secret decoder ring?

**Eric Jesse:** Yeah. Unfortunately, yes we do. Property policies are some of the most complicated policies we see. They're often drafted in a disjointed manner. So you really need to dig in and see what's covered and see what's excluded. So when you do have a loss, we do recommend obviously, working with a forensic accountant, working with coverage counsel to navigate the policy coverages so that when the proof of loss is prepared and the damages calculation is performed, that you're walking into coverage and not walking into an exclusion. And as Stef mentioned, the complication with these

policies certainly extends to calculating the amount of the loss because the policies waived specify how that needs to be done.

**Lynda Bennett:** Wait, so you mean, I don't just get to look at my declaration page and see a \$25 million limit of liability and I get \$25 million if Stef can come up with a \$25 million valuation? Is that how this works?

**Eric Jesse:** No, definitely not. Because as I mentioned before, the devil is in the details and property policies are notorious for having what's called a sub-limit, which is basically a much lower limit than your overall limit of liability. So you might have \$25 million limit of liability on page one of your policy. But as you flipped through the policy, you might see that there's a sub limit for \$1 million for windstorm coverage or for flood coverage. And a lot of policy holders following the hurricanes of the past 15 years from Katrina, to Sandy, to today are often surprised when there's a loss that occurs and then they realize that they have much less coverage than they experienced.

**Lynda Bennett:** But let me ask you something about that, Eric. So if I'm actually paying attention when the policy gets placed and I see the sub-limit, is that a take it or leave it, or is that something that your broker can help to negotiate and perhaps in some instances, get you some relief from that?

**Eric Jesse:** Yeah. Well, in that scenario, it's great that the policy holder is not just putting the policy on the shelf, but is actually taking a look at it. And absolutely, negotiate, try and negotiate the policy terms and conditions. If you're not comfortable with the sub-limit, go back to your broker and try and get a higher limit. If this is an important sub-limit for you, make the broker do their work and go out and potentially market your coverage to other carriers to try and get a sub-limit that you're comfortable with.

**Lynda Bennett:** So Eric, what's this ACC thing that I have been hearing about ever since hurricane Katrina, what is that? What does that stand for? And what is the impact to coverage?

**Eric Jesse:** ACC clauses are the worst. ACC stands for anti concurrent causation clauses, and the way the insurers apply them is that if a covered and uncovered event contributes to a loss, the entire loss is excluded. So if you have a loss where flood, we'll assume is excluded under the policy cause, just 1% of your loss and you have windstorm coverage that was 99% of the cause of the loss, the presence of the flood will allow insurers to exclude the entire loss. So it is unfortunate courts enforce them. And again, this is another example of where policy holders cannot put their policy on the shelf. They need to understand which coverages include an ACC clause. They should go work with coverage counselor, work with their broker to negotiate those ACC clauses out. And albeit, it that's easier said than done. But if this is an important coverage for the policy holder, again, consider marketing your policy or your insurance program to other carriers who might not include an ACC clause for a coverage that's important to you.

**Lynda Bennett:** Right. So Stef, one of the things that our clients are keenly interested in is getting an advanced payment. Even if we can't get the full value of the loss documented in the immediate aftermath of the storm, they want to get an

advance because they know they've suffered a significant loss. So how quickly are you guys able to get in there and get enough of a handle around the loss to support getting an advanced payment?

**Stefanie Jedra:** So all of that is dependent on what the financial records of the company look like. So the most important thing that a business can do to make sure that we can speed that process up is to maintain records that are thorough and clean, including financial statements, budgets, projections, et cetera, because these documents are really at the crux of what we're talking about here with a business interruption.

And thinking about your policy when you're maintaining these types of records will help the process as well. Think about spending maybe a couple of extra minutes, just making sure that you have your policy in mind monthly, quarterly, annually, to make sure that you're maintaining the records that are necessary to support each component of the calculation in the event of a loss, because otherwise you're going to spend time redoing these calculations or looking for information compiling data at the time when you really want us to be speed along the process.

**Lynda Bennett:** That's great. All right. So we've got just a couple of minutes left here. So I did promise that the front end of this episode that we were going to give practical and actionable advice. So I'd like each of you, Eric and Stef, to give me one or two nuggets of lessons learned from prior claims that you've handled. One or two things that if it had been done differently at the front end would have made the claim adjustment process far smoother all the way through.

**Eric Jesse:** So the advice I'd give is it really comes down to understanding your policy. Making sure you're comfortable with the coverage, understand your sub-limit, understand the ACC clause, know what your deductibles and waiting periods are and try and negotiate for better terms, if you can. And then the other piece of advice is, be ready to document the loss and damage both before the storm occurs, so you have a record of your inventory, a record of what the property looked like beforehand and after, so you can show the before and after.

**Stefanie Jedra:** So I think one of our best tips is probably the same with respect to documentation. Eric talked a lot about maybe videotaping or taking photos. And from my perspective, from the books and records perspective, really keeping good records of your inventory and any other assets that may come into play here. And then the last thing is just to consider involving a forensic accountant early on if you think that you have a complex claim. Supporting an initial claim thoroughly and completely can really minimize the work and stress that goes on later on and hopefully reduce the risk of any kind of litigation.

**Lynda Bennett:** All right. Great. Thanks so much, really enjoyed our time today and look forward to connecting again soon.

**Kevin Iredell:**

Thank you for listening to today's episode. Please subscribe to our podcast series at [lowenstein.com/podcasts](https://www.lowenstein.com/podcasts), or find us on iTunes, Spotify, Pandora, Google podcasts, and SoundCloud. Lowenstein Sandler podcast series is presented by Lowenstein Sandler and cannot be copied or rebroadcast without consent. The information provided is intended for a general audience. It is not legal advice or a substitute for the advice of counsel. Prior results do not guarantee a similar outcome. The content reflects the personal views and opinions of the participants. No attorney client relationship is being created by this podcast and all rights are reserved.