

Hurricane Sandy leaves its mark on our region and our profession...



Business Insurance Coverage in the event of a “Superstorm”

Superstorm Sandy has devastated the New Jersey Shore and other parts of New Jersey, causing untold damages to personal residences and businesses. When a ‘Superstorm’ occurs, businesses fortunate enough to have insurance coverage, particularly flood insurance coverage, should take steps immediately to protect their rights under their insurance policies. As a business owner, the first step in the process is to identify what insurance policies you may have which may respond to the loss. Businesses should look primarily to their business owners or commercial property policies and examine any excess or umbrella insurance policies they may have.

Once policies are identified, claims should immediately be reported to your insurers. The fastest and simplest way of providing notice is through your insurance broker, which should be done in writing with the request that your broker provide notice to your insurer. You should request that your broker provide you with a copy of the notice it provides to the insurer. Most insurance agents are extremely helpful in processing claims and assisting insureds with their claims. Notice can also be given directly to your insurer and many insurers set up mobile claim units at which claims can be reported.

While many policies contain standard terms and conditions, each policy has its own language and must be carefully

reviewed to determine the specific coverage provided under that specific policy. The discussion of insurance policies below is based on fairly standard language which appears in many policies but it must be emphasized that you need to review the specific language in your policy which may significantly increase or decrease the coverage provided to you.

Business Owners or Commercial Property Coverage

A superstorm like Sandy can cause incalculable damage to businesses. These include damages to a company’s real property, its personal property and its loss of business. There may be coverage for such losses under a company’s business owner’s policy or commercial property policy, which should be carefully reviewed to determine what coverages are provided and what limits of coverage are available.

1. Nature of Coverage Provided:

There are generally two types of coverages provided under business owners or commercial property policies. The first is “all risk” coverage which provides coverage to the insured’s property for all risks of direct physical loss or damage. This is a broader form of coverage and typically is more expensive to obtain. Under an all risk policy, there will be coverage for direct physical loss or damage to the insured’s property irrespective of the cause of loss, subject to the exclusions in the policy.

The second form of coverage is “named” peril coverage. This provides more narrow protection than the all risk coverage and provides coverage for risk of direct physical loss or damage caused only by specifically listed perils in the policy. Under this more limited coverage, there is coverage for direct physical loss or damage only if caused by the listed peril in the policy. As in an all risk policy, the coverage provided is subject to the policy’s exclusions. A typical flood exclusion defines flood to mean a general and temporary condition of partial or complete inundation of normally dry land areas due to: (a) flood, surface water, rising water, waves, tides, tidal water, storm surge, tsunami, overflow of any body of water or their spray, all whether wind driven or not; or (b) water that backs up from any sewer or drain, or water that leaks or flows from below the surface of the ground. Where a policy contains a flood exclusion, damage caused solely by the flood, as defined in the policy, may be excluded.

However, there is a critical distinction between damage caused by wind, which is normally covered under an all risk policy or a named peril policy, and damage caused by flood. A storm like Superstorm Sandy may have damages caused by both flood and wind. To the extent the damage to the insured’s property is caused by wind, there should be coverage under the policy, subject to other exclusions, even if a flood causes additional or separate damage. By way of example, the wind may knock a tree down onto the insured’s property causing physical damage to the property. Rain may penetrate the property as a result of the damage caused by the tree. This damage would likely be covered as wind

is a covered cause of loss and the damage to the property, including the water damages, resulted from the wind. However, if during the same storm a tidal surge caused water to flood other portions of the property, that damage may not be covered if there is a flood exclusion.

If a dispute arises between you and your insurer as to whether damage to your property is caused by wind or flood, it may be necessary to retain an expert in the area of cause and origin of insurance losses to determine what damage was caused by wind compared to damage caused by flood. Additionally, eyewitness testimony will be helpful so you should speak with any of your neighbors, employees or other persons who may have witnessed how your business property has been damaged.

2. Coverages Provided Under a Business Owner’s Policy or Commercial Property Policy:

Business owner’s policies and commercial property policies typically contain coverages for damage to buildings, for business personal property, and for business income / extra expense. Other additional coverages may also be provided and the policy must be carefully reviewed for such additional coverages.

a. Coverage for Buildings.

The declarations page of the policy will identify which buildings owned by the insured are covered under the policy. Values are normally provided for the buildings. The policies may provide coverage for either the replacement cost of the structure or for the actual cash value of the structure. The policy should be reviewed carefully to determine what type of coverage is



Since Sandy made New Jersey landfall KSI team members have been surveying damage 7 days a week all along the Jersey Coast. Some FEMA inspectors have commented to us the devastation brought by this storm has been the worst in scope they have ever seen. From beloved homes that have been vacation spots for generations of families to iconic buildings such as the Great Auditorium in Ocean Grove, Sandy did not discriminate. Even homes built like fortresses could not compete with the storm’s waves and wind. It is apparent some homes have greatly mitigated damage through good architecture and sound engineering, while older neighboring homes did not fare as well.

Many building lessons will be learned from this disaster. It is yet to be determined the full impact Sandy will have on our cherished shore. Architects and Engineers will have an important role in the rebuilding of New Jersey, designing structures that will put up a fight to the next 100 year storm.

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provided for damage to the property. If there is a covered loss, the insurer will pay the claim up to the policy limits for building coverage identified on the declarations page. Photographs or videotape should be taken of all damage to the structure.

b. Coverage for Business Personal Property.

Most business owners or commercial property policies provide coverage for personal property owned by the insured. The amount of coverage for such personal property is normally identified in the declarations page. Upon a covered loss, the insured should carefully document and inventory all the personal property which it has lost for which it will be submitting a claim. The insured will be required to submit a sworn proof of loss in which the insured must identify under oath all of the property it claims to have been damaged for which it is seeking insurance coverage. Photographs or videotapes should be taken of all damaged personal property. Unless required to do so for safety or health reasons, the damaged personal property should not be discarded until the adjuster appointed by the insurer has come to inspect your property. If you discard any damaged property for which a claim is submitted, the insurer may disclaim coverage. In New York policyholders can submit photographs of damaged property as proof of loss of the property.

c. Business Interruption Coverage.

This coverage protects the insured against loss of income resulting from damage to the insured property. Business interruption coverage is often subject to complex deductibles and co-insurance provisions which must be carefully reviewed. The insured should work carefully with its attorney and broker in presenting the business interruption claim. Outside professionals, including accountants or professional adjusters, may be of assistance in presenting such a claim to the insurer. Some of the costs incurred in calculating the business interruption loss by professionals such as accountants may be recoverable under the policy, but fees for attorneys and public adjusters typically will not be covered.

As an incentive to insureds to move quickly to restore the insured property so that business operations can commence as soon as possible, insurers will normally pay the insured's reasonable expense to restore operations. If there is no direct physical

damage to the insured's property, then the business interruption coverage may not apply. However, some policies provide coverage for a business interruption loss resulting from damage to a utility service caused by a covered cause of loss. Many businesses lost power and were unable to conduct business without sustaining any physical damage to their property. If the business owners or commercial property policy includes a utility service – direct damage endorsement, or similar type of endorsement, there may be limited coverage for a business interruption loss caused by damage to a power supply service, including utility-generating plants, switching stations, substations, transformers and transmission lines, by wind damage. The policy must be reviewed to determine if such coverage exists and in what amount. Typically the amount is less than the coverage provided where there is direct physical damage to the insured's property.

d. Coverage for Damage Resulting From Acts of Civil Authority.

Some policies provide this coverage which provides that when a covered cause of loss causes damage to property other than the insured's property, the insurer will pay the loss of business income and extra expense caused by action of civil authority that prohibits access to the insured's premises. This coverage, if it is provided in the policy, may require that: (1) access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage and the insured's property is within that area but not more than five miles from the damaged property; and (2) the action of civil authorities is taken in response to dangerous physical conditions resulting from the damage or continuation of the covered cause of loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

e. Debris Removal.

Many policies provide additional coverage for debris removal in which the insurer agrees to pay the reasonable expenses incurred to remove debris from the covered property caused by a covered cause of loss. Typically there will be sub-limits of coverage for this additional coverage

which will be identified on the declarations page or a separate endorsement to the policy. This may be a very significant coverage, as demonstrated by the substantial debris generated from Sandy's destruction.

Business Excess and Umbrella Policies

Many businesses may have excess or umbrella property insurance coverage. These policies should be carefully reviewed to determine whether they provide additional coverage beyond the coverage provided in the primary policy in addition to the increased limits of coverage which may be provided in the umbrella and excess policies. The umbrella and excess policies typically "follow form" to the primary policy, which means they are normally subject to the same terms and conditions as the primary policy. However, some excess or umbrella policies may contain additional exclusions which may not be excluded from the primary policy, including an exclusion for flood. Both the primary and excess and umbrella policies should be carefully reviewed in this regard.

Claims For Benefits Under FEMA

In the event a business owner either has no insurance coverage, or the insurance coverage does not provide flood coverage, you may be able to obtain the benefits provided by FEMA through a loan administered by the Small Business Administration. It is important that anyone seeking FEMA benefits immediately register with FEMA and submit an application for a low interest loan through the Small Business Administration.

Lost Policies

When a natural disaster strikes, it is possible many businesses may lose records of their policies. In that event you should contact your insurance broker who should have some record of your insurance coverage.

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Like many of us, LAN's business was significantly affected by Hurricane Sandy. Fortunately neither of our offices or employees' homes suffered major physical damage, but our NJ office was essentially closed for the seven days after the storm. While both of our offices (and many of our employees) lost power and internet connectivity the night of the storm, our NY office was back online fairly quickly. Unfortunately, all of our data resides in our NJ office, so all 70+ of our employees were unable to work. Fortunately, we maintained contact with our staff via text messaging those first few days until we were able to get our email servers relocated to a temporary location. Once we had email and cell phones, we were able to reach out to our clients and provide as much assistance as possible. We also utilized Facebook and email blasts to keep our clients up to speed with our progress. Thankfully, our friend Tony Lasaponara from TAM Enterprises was eventually able to send us a large generator to power our entire building and get us back up and running, three days before power was finally restored to our building. Disaster recovery efforts have been an important issue for us well before the recent storm, we definitely have a renewed sense of urgency. For 2013, we hope to have full redundancy between our two offices, which would allow our employees to work at either location, or remotely from home, should one of the offices suffer another shutdown.

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