

# Superstorm Sandy The Inconvenient Truth About Business Insurance Claims

## 7 tips for maximizing coverage

Superstorm Sandy left a trail of destruction from Virginia to Massachusetts, wreaking havoc on hundreds of thousands of businesses and millions of people. Although the New York City metropolitan area was hardest hit, an untold number of businesses outside that area are also suffering from storm-related financial losses. Given the breadth of coverage provided under typical property damage and business interruption insurance policies, it makes sense for impacted businesses to evaluate their insurance coverage, and in situations where coverage is provided, zealously pursue that coverage.

For most businesses, this is not a familiar exercise. Pursuing a property damage and business interruption insurance claim may be a once-in-a-lifetime proposition. For insurance carriers, the exact opposite is true. Recent historical events, including 9/11 and Hurricanes Katrina, Andrew, Wilma and Irene, have provided insurers with ample opportunity to formulate claims procedures and test the bounds of claims handling.

A legitimate question is: What have the insurers learned from these experiences, and how will they apply this knowledge to Superstorm Sandy claims? Insurers may advocate that their experience permits them to quickly process and pay legitimate claims. The truth, however, is far from this ideal. **The inconvenient truth is that insurers don't want to pay claims, and, if left unchecked, will attempt to limit or eliminate coverage.**

Given this dirty little secret about property insurance claims, it is imperative that impacted businesses take a pro-active approach to claims. With the right kind of knowledge and help, businesses can effectively challenge coverage limiting techniques of insurers, and obtain the full paid-for benefits of their policies.

## Available Coverage

The first step for impacted businesses is to determine what coverage is legally available. This requires a careful review of the applicable property and business interruption insurance policies, and a review of applicable law impacting coverage.

Businesses impacted by Sandy, at a minimum, should be covered for property damage, business interruption, and extra expenses incurred as a result of storm damage. Most policies also contain coverage for financial losses resulting from the interruption of goods and services from suppliers, the interruption of utility service, and the inability to access property. Understanding the legal bounds of coverage is imperative, as it typically leads to additional millions, if not tens of millions of dollars in coverage.

# Actionable Strategies

Coverage provided under typical property damage and business interruption insurance policies is designed to bring a business back to where it was before the calamity. The following strategies are designed to help businesses realize this intent.

## 1 COUNTER DELAY WITH ACTION

Clients often ask: Why is it taking so long for the insurance carrier to respond? The answer, unfortunately, is that insurance carriers benefit from delay. The only way to counter delay is to lead the claims process rather than follow it. Every letter sent by an insurance carrier should quickly be responded to, and valid information requests should be timely fulfilled. Invalid information requests, likewise, should be countered in writing. Businesses should always be in the position to demand action from their insurer.

## 2 OPPOSE EFFORTS TO MINIMIZE RECOVERY

Unfortunately, insurers attempt to minimize coverage. A common and notoriously abused practice with Katrina claims was for insurers to deny claims based on flooding (sometimes excluded), and ignore other covered causes of loss, such as wind damage. Another common practice utilized by insurers was to improperly apply both deductibles and sub-limits. In the end, there is no substitute for a full analysis of coverage based on policy language and the law. Without this, businesses will find themselves unable to effectively counter insurance company arguments.

## 3 USE THE LAW TO YOUR ADVANTAGE

Insurers routinely utilize law firms to justify their actions. If a claim is worth over several million dollars, you can be assured that your insurer has outside legal counsel tasked with the job of devising and implementing coverage limiting defenses. Once a business makes the decision to retain counsel, careful consideration should be given to selecting the right law firm. Almost every large law firm supports the insurance industry, either directly by representing insurers, or indirectly, by taking insurance company money when defending claims on behalf of policyholders. There is nothing wrong with this; so long as businesses understand that most large top-tier law firms have their hands tied tightly behind their backs when it comes to insurance claims.

## 4 USE ACCOUNTING TO YOUR ADVANTAGE

One of the most important protections afforded under traditional property insurance policies is business interruption insurance. When an insurance company is presented with a claim, one of the first things they do is hire an accounting firm. Their role is two-fold: first, to come up with an exhaustive laundry list of information that they allegedly need to process the claim, and second, to process the numbers in such a way as to minimize business interruption losses. Unlike financial accounting, claims accounting has no established rules or procedures. The only way to counter these tactics is to hire a policyholder-side accounting firm that specializes in business interruption claims, and to counter insurance company demands with letters exposing the over-reaching nature of their requests.

## 5 RESPOND TO INVALID INSURANCE INDUSTRY CUSTOMS AND PRACTICES

Often, insurers act on custom and practice rather than policy obligations. One example relates to how they calculate deductibles. Many policies contain high hurricane deductibles, and low hurricane sub-limits. Accordingly, insurers are incentivized to classify Sandy as a hurricane, despite the fact that it was not a hurricane when it made landfall. Irrespective of orders from governmental entities attempting to prohibit insurers from doing this, an insurer's determination of this issue, and many other issues, may be driven by unwritten customs and practices within the industry. The vast majority of these customs and practices are designed to minimize coverage. Every time an insurer states, "this is just the way it works," alarm bells should go off. The policies and the law, rather than custom and practice, control, and millions of dollars are often at stake. For this reason, unfounded insurance company practices should be aggressively countered with sound legal and insurance policy analysis.

## 6 TAKE POLICY DEADLINES SERIOUSLY

Property insurance policies contain so many deadlines that even the most organized business is at risk of missing an important deadline. Policies contain deadlines for filing suit, making claims, filing proofs of loss, and many other things. The failure to meet any single deadline could result in a total forfeiture of the claim. Although most insurers will extend applicable deadlines, they will do so only if an extension is requested prior to its expiration. If a deadline is missed, it will be held against you. To minimize this risk, a careful analysis of policy deadlines should be conducted, and applicable deadlines should be calendared and monitored.

## 7 UNDERSTAND WHAT DRIVES INSURANCE COMPANY ACTIONS

It is far from uncommon for businesses to get less than what they are owed on claims. One possible reason for that is that the insurance carrier never took them seriously. Insurance company lawyers have already circulated articles to their clients advising them on how far they can go with their Sandy-related claims handling tactics. Even with this advice, many insurers go too far. In any event, without objective and effective counsel, the deck is stacked against policyholders. The only way that an insurance carrier will take a business seriously is if they believe that the business has the capacity and ability to sue. Sometimes, it is enough for the insurer to know that a capable and effective opposing adversary is looking over the claim.

## Conclusion

Insured property and business interruption claims arising from Superstorm Sandy are estimated to exceed \$20 billion. For some businesses, payment of these claims could be the difference between survival and failure. Unfortunately, the inconvenient truth is that insurers are not incentivized to pay claims. To the contrary, every aspect of the claims handling process is designed to minimize coverage. The only way to safeguard against this, is to understand how the claims process really works, and to undertake an aggressive and pro-active approach to presenting and resolving claims.

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