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Client Alert  
Insurance Recovery

## Hurricane Harvey: Policyholders Need to Act Promptly to Preserve Rights to Insurance

### At a Glance...

Hurricane Harvey and its aftermath have brought extensive damage to property and disruption to businesses over a wide area of Southeast Texas and extending into Louisiana. Companies should examine their insurance policies and promptly take steps to preserve and maximize coverage for their losses. The need for prompt action is particularly acute because a new Texas law restricting policyholders' remedies takes effect on September 1, 2017.

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Hurricane Harvey and its aftermath have leveled unprecedented destruction and damage on Southeast Texas, and caused massive property damage and business disruption. Impacts are being felt well inland, and are extending to Southwestern Louisiana as well. Unfortunately, the slow-moving and lingering nature of the storm has exacerbated the extent and duration of the injuries to residents and business located and doing business in numerous locations, including Corpus Christi, Galveston, Houston, Austin, and surrounding cities, and has interrupted oil and gas operations in the Gulf of Mexico and interfered with operations at many Texas ports. Total losses for damage to property and interruption of business are likely to be measured in the billions of dollars, and the struggle to repair and rebuild are likely to take months or, in some cases, years.

Historically, the insurance industry's reaction to natural disasters has not been as positive as insureds would hope. For example, insurance claims from Hurricanes Katrina, Wilma, and Ike, and Superstorm Sandy, were the subject of protracted disputes that went on for many years, and are still ongoing for Superstorm Sandy. Decisions made at the time of the weather event may impact policyholders' rights to recovery under insurance policies. Policyholders therefore need to be proactive in claiming and preserving their rights, and documenting their losses.

A critically important and unfortunate turn of fate is that insureds suffering property damage and business losses from Harvey also are faced with a looming deadline to avoid application of a new Texas law that significantly restricts insureds' rights with respect to weather-related insurance claims. Texas House Bill 1774 is set to become effective on **Friday, September 1, 2017**, with respect to insurance claims arising from "damage to or loss of covered property caused, wholly or partly, by forces of nature" including hurricane, tornado, flood, wind or rainstorm. HB 1774 limits insureds' remedies for improper insurer handling of claims and adds a series of requirements for insureds'

submission of claims for such damage or loss. ***Because of the pending implementation of HB 1774, insureds that have suffered property damage and/or business interruption due to the effects of Harvey are well advised to make a written claim submission to their relevant insurers by August 31, in order to mitigate the effects of the new law.***

Because of the damage sustained, commercial policyholders may have significant insurance claims for property damage, loss of business income, and extra expenses incurred to continue or resume operations. Insureds should be aware that they may have insurance coverage for business income losses and extra expenses, even if their own insured property has not been physically damaged, including situations where ingress/egress to the insured property has been impeded; where operations have been impacted by government-ordered evacuations and curfews; and where damage has been sustained to certain third-party property of customers, suppliers, or “business attracting” properties. Businesses should immediately determine whether they have an insurance policy that would provide coverage for business losses and property damage caused by Harvey, and review the notification and evidentiary requirements of the insurance policy. Alternatively, businesses should seek input from a professional who is qualified to assist them in making that assessment.

Most importantly, policyholders should know what their policies say, and what they require, before incurring unnecessary costs. Commercial policyholders should consider the following guidelines while assessing the impact of Harvey and in preparing an insurance claim:

- ***First, Protect and Preserve the Assets.*** Emergency and temporary repairs should be documented and, if practical, reviewed with the insurer in real time.
- ***Attend to Notice and Timing.*** Make sure notices have been issued to all insurers that could be called upon to provide coverage. These issues are of particular importance in the case of insurance claims involving Harvey, because of the new Texas statute negatively affecting insureds’ rights in connection with such claims. If the policy requires a Proof of Loss within a short time frame, obtaining a written extension may be advisable. Spot any other time-related requirements and ensure they are satisfied or extended by the insurer.
- ***Reserve All Rights.*** Reserve all your rights to coverage. Do not allow the insurer to classify or characterize your claim before you have had a full opportunity to review everything and properly present your claim.
- ***Form a Team.*** Form a team of all personnel involved in the claim, and hold regular team calls or meetings. Review the policy with counsel; remember that all exclusions and limitations must be construed strictly and narrowly. The insurer will have counsel, adjusters, consultants and accountants. Consider leveling the playing field with your own team. Many policies cover some of these claim-preparation costs.
- ***Be Aware of Deductibles and Sublimits Before Agreeing on Causation.*** Review causation and proceed carefully before taking a position. Coverage, sublimits, and deductibles can be significantly affected by determinations as to whether the damage was caused by wind, storm surge and/or flooding.
- ***Attempt to Involve Insurers Before Repairs.*** Attempt to obtain insurer approvals before repair and replacement of property. Be aware of insurers’ rights to salvage property. If insurers are silent or non-responsive in the face of repair decisions – as is often the case – document it for the record.
- ***Documentation and Accounting.*** Keep exact and precise records of all communications, meetings, and exchanges. Set up accounting codes or other processes to track all invoices, costs, and expenses of any kind related to the claim, by various categories. Continue to submit documentation to the insurance company as losses are incurred.

- *Communicate.* Develop relationships at all levels of your team with their respective insurer-side counterparts. Keep communication open and civil.
- *Replacement Cost New Means Replacement Cost New.* Most policies value property on a Replacement Cost Value (RCV) basis. By definition, what is old is being replaced with something new. This is a natural “upgrade.” Be wary of insurer pronouncements that the damaged property had “preexisting” defects or wear and tear.
- *Do Not Forget Code Upgrades.* Most policies cover code upgrades. Be aware of the underlying codes and whether they will increase repair costs. This is especially important in dealing with buildings not originally built to meet now-existing codes. Capture all such costs in your claim.
- *Prepare the Business Interruption and Extra Expense Claim Carefully.* Insurers will challenge attempts to recognize net profit for an interruption period. Utilize experts who can draw on market data to prove the “BI” analysis.
- *Review Other Agreements That Can Affect the Claim.* There may be agreements that can impact a claim – a loan agreement, a ground or space lease, a property management agreement, etc.
- *Draw on the Business Side.* Insurance is expensive. You should expect fair treatment on the claims side. Business contacts, such as between risk managers and brokers, should be explored. If the insurer does not live up to its end of the contract, consider renewal with a different insurer.
- *Work Toward Resolution.* All claims should settle. If yours does not, make sure it is only because the insurer is being unreasonable and that the record makes this obvious – so that if you do end up in litigation, it will be apparent that you gave the insurer every opportunity to adjust the claim based on the facts, and that the insurer chose to be aggressive and unreasonable.

Reed Smith’s Insurance Recovery Group has unmatched experience in advising and assisting policyholders in all aspects of first-party property damage and business interruption insurance claims. Reed Smith has more than 80 insurance recovery lawyers with extensive experience assisting policyholders affected by losses such as Hurricane Harvey. If policyholders have experienced damage or loss as a result of Hurricane Harvey, Reed Smith’s insurance recovery lawyers can help evaluate applicable coverage for damage to property, loss of business income, and extra expense caused either directly by Hurricane Harvey, or because the property of their customers and suppliers has been damaged. Reed Smith represents many clients affected by events such as this, and we are familiar with the applicable insurance policies and notice obligations. Even if you have not suffered losses as a result of Hurricane Harvey, now may be the time to evaluate your existing coverages to see if you are adequately protected for future events that might affect your business. Reed Smith can assist you in reviewing your existing coverages to assess whether you have any gaps that should be filled.

*If you have questions or would like additional information on the material covered in this Alert, please contact one of the key contacts – listed below – or the Reed Smith lawyer with whom you regularly work.*

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