

Client Alert

December 2014

Insurance May Help Weather the Winter Storm

With winter's fury already in full swing – as evidenced by the epic winter storm now dumping eight or more inches of rain and three or more feet of snow on California, and the recent severe lake-effect snows to blanket Buffalo, New York, and its surrounding areas with six or more feet of snow (and subsequent flooding) – it's important that policyholders remain mindful of the substantial benefits that may be available to them under ordinary business insurance policies.

Power outages, roof collapses, floods, landslides, avalanches and road closures, among other things, will invariably result in business interruptions, supply chain and logistics disruptions, event cancellations and, consequently, lost earnings and extra expenses. Likewise, damage to vendors, customers and markets, including their supply and distribution chains, will in turn lead to production slowdowns and delays – sometimes many miles away from the location of any actual physical damage. In addition to damage to existing structures, damage to properties under construction or renovation may have a significant impact on contractors, property owners and developers. Damage to occupied properties may give rise to claims against property owners, landlords, building managers and condo/property owners associations.

Knowing *before the storm* whether coverage is available for these and other types of storm-related losses is critical to ensuring that timely and appropriate steps are taken *after any loss occurs*, since any delay in reporting a covered loss may limit or altogether jeopardize otherwise available coverage.

Types of Losses for Which Insurance May Be Available

Businesses are affected differently by the same storm, and even the same physical damage. For instance, a physical loss to a part supplier caused by a snow-induced roof collapse might impact that business as a physical property loss and as a consequential loss of business income. That same event might also indirectly impact a product manufacturer that relies on the part supplier for components to its product. Likewise, the event might also affect a supplier of raw materials used by the part supplier, since the part supplier's need for raw materials will be diminished during the time it takes to repair the physical damage. Companies supplying transportation, logistics and other essential support services also might be impacted, even though none suffered physical damage.

Insurance is a resource to pay for these losses. Today's commercial property policies often contain a number of specialized coverages. Depending on the facts of the loss, one or more of those coverages may apply:

- **Physical Loss or Damage to Insured Property:** There is generally coverage for the cost to repair, replace or rebuild property that suffers physical loss or damage. Covered premises are usually listed and scheduled in the policy and may include not only buildings, but also equipment and business personal property such as furniture, machinery and stock.
- **Collapse Caused by Snow and/or Ice:** Some property policies will cover damage caused by collapse where the collapse is caused by the weight of snow and/or ice. Others may not afford that coverage, while still others may do so at reduced sublimit.

- **Water Damage Caused by Burst Pipes and Water Mains:** In general, water damage from a burst pipe inside a business will be covered. If an outside pipe or main bursts and causes damage, that also should be covered. It may be necessary, however, to demonstrate that the damage did indeed result from the burst pipe. If the insurer concludes that poor drainage – which is often a non-covered maintenance problem – caused the break or resulting damage, coverage may be denied. A claim also might be denied if policyholder negligence, such as leaving a vacant building without heat, caused the break. Further, even if the insurer does pay for the water damage, it may refuse to pay to repair the pipe itself contending that the pipe was damaged by “wear and tear,” which is often an excluded peril.
- **Wind v. Flood:** Virtually all property policies cover wind damage. Many property policies contain substantially reduced sublimits, or exclusions, for flood damage. It is important that policyholders examine the “cause” of their loss, and evaluate whether there are multiple causes, before submitting a claim. Property owners may also want to consider obtaining separate flood coverage where available.
- **Expenses Incurred in Attempting to Mitigate or Stop the Damage:** Property policies typically cover expenses incurred in taking preventative measures to avoid loss. Many policies contain an affirmative requirement that the insured take steps to safeguard the property and prevent further damage. Those steps should be reimbursed under the insurance policy.
- **Extra Expense Coverage:** Repairing or replacing damaged property is not the only expense item when property is damaged. Often the cost of operating the business also goes up during the time when the business is affected by the storm or its aftermath. Extra expense coverage is intended to indemnify the insured for above-the-norm expenses caused by the insured event. Examples may include the cost of a generator when electricity is lost, or costs incurred to operate at a temporary location.
- **Business Interruption Coverage:** Property policies generally cover lost income or profits caused by the interruptions, including slowdowns, of business activities due to physical damage to the insured’s property. The basic purpose of the coverage is to make the insured whole during the period it takes to rebuild or replace the property destroyed.
- **Contingent Business Interruption Coverage:** Even if a company’s own property has not been damaged, its business may be interrupted by damage to the property of others, such as suppliers, customers, or other business partners. In such circumstances, the company’s lost income often is covered by contingent business interruption coverage.
- **Orders of Civil Authority:** Coverage may also be available when business income is lost as a result of governmental directives preventing or restricting access to property. These losses may be recoverable even if the company’s own property has not been damaged.
- **Ingress/Egress Coverage:** Similarly, many policies cover losses when ingress to or egress from a covered property is prevented or hindered by the event. This coverage may come into play in the event of road closures, the closing of mass transportation, and other transportation problems.
- **Service and Utility Interruptions:** Losses and expenses caused by power, water and telecom outages can also have a significant impact on business operations. Resulting losses may be covered under property insurance policies.
- **Builders’ Risk Losses:** Contractors, building owners and developers may sustain losses potentially covered under builders’ risk insurance. Such losses may arise from damage to buildings under construction or renovation, damage to staged construction materials,

contamination caused by hazardous materials on the job site, or general soft-cost losses caused by construction delays attributable to weather conditions or storm damage.

- **Landlord Liability:** Landlords may also face claims asserted by tenants for bodily injuries, damage to personal property, and loss of use and related losses of rent. Likewise, claims may be asserted by third parties injured on leased or managed properties as a consequence of storm-related conditions. Such claims may be covered under landlord liability policies and/or general liability policies.
- **Building Association Liabilities:** Condo and building owners associations may also face storm-related claims in the context of alleged failures to properly maintain roofs, doors, windows and walls in a manner that could weather the storm. Such claims may implicate coverages under associations' errors and omissions policies, and directors and officers liability policies, as well as property policies maintained by the associations for common building elements and systems.

The precise terms of the policy and applicable law govern the existence and extent of coverage. In addition, policies are often endorsed or contain exclusions that may expand or reduce coverage. Some applicable limitations on policies include sublimits on certain losses that limit the total available insurance for a particular type of damage, exclusions for flood or water damage, earth movement exclusions, government action exclusions that may not permit recovery for interruptions in business where government authorities limit access, etc.

The burden is always on the carrier to prove the terms and applicability of any exclusion of coverage in a policy. Exclusions are read narrowly and, where found to be ambiguous or not sufficiently notorious in the policy, they will be disregarded or construed in the light most favorable to the insured and in favor of coverage. Insureds are always best served by a careful analysis of their policy terms, the controlling law governing their insurer's obligations, and a precise documentation and presentation of their loss during the claim process.

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Hunton & Williams insurance recovery lawyers assist policyholders in securing the full benefits to which they are entitled in the event of any type of loss, including losses to property and income caused by winter storms and other severe weather. For more information, please contact the members of the firm's Insurance Coverage Counseling and Litigation team.

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