

Client Alert

October 2019

Plan, Prepare, Prevent: How to Smoothly Navigate This Year's Anticipated Active Hurricane Season (Part 3)

In this last alert in a series of three, we discuss how to prevent denials of pending claims based on suit limitations periods. Our goal with this series has been to give you a comprehensive outline that will guide you before and after a loss. In Parts 1 and 2, we discuss the importance of understanding the potentially available coverage under your insurance policies, including how to properly prepare a claim in order to benefit from coverage such as business and utility interruption. Be sure to check out the first two parts of the series here: [Part 1](#) / [Part 2](#).

With hurricane season underway, it is important to have a plan in place to mitigate the extent of financial losses from a storm. This year, forecasters are concerned about unusually warm water near the east coast of the United States and the Bahamas. Specifically, they are alarmed because warmer waters cause storms to increase in intensity rapidly—leaving individuals and businesses with less time to prepare for a severe storm. Below, we address how to prevent claim denials based on existing claims remaining since Hurricanes Harvey, Irma, Maria or Michael.

Prevent Denials of Pending Claims Based on Suit Limitations Periods

The Florida Office of Insurance Regulation estimates that the insured losses from Hurricane Michael exceed \$6.3 billion. That amount is sure to increase since, almost one year after the storm, over 16 percent of the claims made in Florida are still open. In comparison, the insured losses from Hurricane Irma exceed \$11 billion, with roughly 7 percent of claims pending resolution nearly two years later. To give you a sense of the volume of claims reported to insurance companies following a storm, policyholders made over 1,000,000 claims for insurance proceeds from damage caused by Hurricane Irma alone, and numerous claims remain open.

First-party insurance policies generally include provisions requiring policyholders to make claims within one year from the time of a loss. State officials and legislative bodies, however, have extended the time prescribed by those provisions for claims arising from hurricane activity. For example, in 2006 in response to Hurricane Katrina, the Louisiana legislature enacted Rev. Stat. Ann. § 22:658.3, which provided in relevant part that “any person or entity having a claim for damages pursuant to a ... personal property insurance policy ... or commercial property insurance policy, and resulting from Hurricane Katrina shall have through September 1, 2007, within which to file a claim with their insurer[.]” Hurricane Katrina made landfall in the United States on August 29, 2005. Louisiana essentially granted policyholders an extra year within which to make their claims to the insurance company.

Florida's Office of Insurance Regulation (the Office) has done the same. For instance, following Hurricane Matthew, the Office communicated the extensions that the Federal Emergency Management Agency (FEMA) granted to policyholders in Florida to file proof of loss statements in connection with their flood claims under its National Flood Insurance Program. In total, policyholders had an extra 180 days to file their proof of loss statements. Under normal conditions, policyholders have just 60 days to file the statement after submitting a claim.

Similarly, following Hurricane Irma, the Office issued an emergency order, which extended claims-reporting periods and grace periods for the payment of premiums, as well as addressed the performance of other duties by policyholders. Specifically, under the order, any time limit imposed by a policy provision upon a policyholder to perform any act on or after September 4, 2017, was extended until December 3, 2017. In Executive Order 17-330 on December 29, 2017, then-Governor Rick Scott extended his declaration of a state of emergency for the third time, effectively extending the emergency period for an additional 60 days.

Other states have issued similar orders affecting insurance-related deadlines. For instance, the Office of the Commissioner of Insurance for Puerto Rico issued an order granting a premium payment grace period and suspending insurance companies' ability to cancel policies for lack of payment. In response to Hurricane Harvey, the Texas insurance commissioner issued a bulletin urging insurers to provide relief to policyholders, including by suspending premium payments but allowing for continued coverage. The commissioner clarified that the suspension of premiums was not intended as a forgiveness of premiums, but encouraged insurers to enter into payment plans with policyholders if necessary.

In addition, your policy may contain a provision requiring that you file suit against the insurer within a certain time period after the loss or after the claim is made. Because courts have generally enforced suit limitation provisions, it is important to know whether your policy contains such a clause and its potential implications. See, e.g., *A+ Restorations, Inc. v. Liberty Mut. Fire Ins. Co.*, 714 Fed. Appx. 923, 924 (11th Cir. 2017) (applying Georgia law and affirming the trial court's decision that the action was barred by the suit limitation provision in the insurance policy); and *Davidson v. Brethren Mut. Ins. Co.*, 2007 WL 2007991, at *1 (M.D. Pa. July 5, 2007) (applying Pennsylvania law and granting the insurer's motion for summary judgment based on the argument that the action against it was barred by the policy's one-year suit limitation clause).

In Florida, suit limitation provisions are generally void as against public policy under § 95.03 of Florida Statutes. Under that statute, any provision in a contract fixing the period of time within which an action may be filed is void if it fixes a period shorter than the applicable statute of limitations. In Florida, policyholders generally have five years, from the date of loss, within which to sue an insurer for breach of a property insurance policy. See § 95.11 (2)(e) of Florida Statutes. Because your policy might contain a suit limitation provision that is unenforceable, it is important that you understand the implications of such provision before giving up on your insurance recovery efforts and absorbing a loss.

Accordingly, if your business experiences any losses from this year's storms, do not rely solely on the provisions of and the time periods stated in your policy, as these are generally extended or suspended following catastrophic events such as hurricanes—and, in some jurisdictions, may even be void as a matter of public policy. Competent coverage counsel can help guide you through this process.

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Hunton Andrews Kurth LLP's insurance recovery lawyers assist policyholders in securing the full benefits to which they are entitled in the event of any type of loss, including amounts spent to defend or settle large-scale litigation. For more information, please contact the members of the firm's insurance coverage practice group.

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