

Tips for Restaurant Insurance Claims in the Aftermath of Superstorm Sandy

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Superstorm Sandy has caused immense damage to the East Coast, with losses estimated in the tens of billions. Many restaurants suffered severe physical damage, but even more saw major business interruption losses, utility service interruption, inability to receive supplies, and other losses, some of which are ongoing.

As the power returns to New York, New Jersey, Connecticut, Pennsylvania and other areas that bore the brunt of Superstorm Sandy, restaurants are beginning to take stock of their condition and their losses. Insurance coverage generally provides restaurant owners, from single locations to major chains, the opportunity to recover for a wide range of the losses suffered. How much can be recovered, and how quickly, will depend on many factors, but the starting points are a good understanding of your policy's coverage and diligent follow through in the claims process. This alert provides the basics of what to do and what to consider.

Obtain and Evaluate Policies

The first thing every restaurant owner should do is to collect all of its insurance policies. The primary coverages that will be at issue are provided in most commercial property insurance policies. Take care to ensure that you gather all policies in force. For example, you may need to consider coverage under your company's auto policy, and if you have separate flood insurance, you will need to consider that as well.

Understanding the types of losses that can be covered is the next step. Building damage, ruined equipment, and spoiled food are examples of the most obvious **property claims**. Subject to terms requiring careful consideration, the **business interruption** provisions of most commercial property insurance policies will provide reimbursement for lost revenues. Additionally, consider that your policies may provide specific coverage for **utility service interruption** (covering losses resulting from power outages), **contingent business interruption** (covering losses from an inability to receive or deliver supplies), **civil authority** (covering losses due to the prevention of access to premises), other **ingress/egress coverage**, and **"extra expense,"** generally described as the extra cost of maintaining business as a result of a covered loss.

Don't assume all aspects of the claim will be identified for you by your insurance company. Unless you are an insurance expert, get someone experienced in insurance claims to make sure that the full scope of the claim is being considered.

Place All Insurers on Notice

Notifying each insurer of losses as soon as possible is one of the most important steps to preserving potential insurance rights. Most insurance policies include express instructions for providing notice to the insurer. These instructions should be followed meticulously. Notice is generally provided through the insurance broker, but it is important to verify that the notice is accurate and sent to the correct parties. Even if you have not yet identified all of your losses, or determined conclusively that a policy might respond, make sure to notify all insurers that may provide coverage, including excess and quota share participants on your property program. If you plan to have your broker provide notice, make sure you obtain a copy of that notice. Importantly, don't wait until your losses are calculated to provide notice—give notice right away, and then work on the claim details.

Document Your Losses and Ask for Partial or Advance Payments

Properly documenting the loss or damage to property is crucial. This includes not only property that was damaged during the storm, but also any property rendered unusable in the days following the storm—for example, inventory exposed to moisture. It is important to document the damage with photographic evidence before undertaking any restoration activities. Establish separate accounts to track losses, including any extra expenses, professional fees, mitigation and clean-up costs, and other expenses associated with the storm and the recovery period. Keep a log of all actions taken. Save all repair receipts and other records of additional expenses made necessary by storm-related damage. Most property policies allow for partial or interim coverage payments—do not assume you must wait until all the details are finalized before you receive insurance benefits you paid for.

Understand Insurance Experts and Their Limitations

Your insurance company will assign or hire a professional insurance adjuster to evaluate your claim. You will have the option of dealing with the claim on your own, hiring a lawyer, a “public adjuster,” or other professional to advise you on minimizing your losses by maximizing your insurance recovery. For larger business interruption losses, a forensic accountant may be needed. Some experts' professional fees and other mitigation expenses are frequently covered under property policies, subject to sub-limits. Usually, public adjuster fees are not covered, and while they can help in some cases to quantify and negotiate the amount of a loss the insurer agrees is covered, they are unable to advise regarding disputed coverage issues. It is also a good idea to retain an experienced insurance coverage lawyer, not just when you need an advocate, but to help you protect the privileged nature of your communications and to avoid many of the traps for the unwary when presenting your insurance claim. Counsel may work in the background, without revealing their involvement to carriers. Insurance carriers usually do the same thing. Cooperate with the insurance company adjuster, but don't forget they work for your insurer, not for you. If you need an advocate, hire your own.

Other Considerations

Insurance policies require reasonable cooperation, and contain many conditions and deadlines that must be satisfied in order to obtain payment. You will need to take steps to mitigate the loss, and to help preserve the property. Your insurance company may provide assistance with some of these tasks, ranging from fencing and boarding to ventilation and other means to dry out the damaged property. Most ruined food cannot be salvaged, but water-damaged furniture or equipment might be salvageable, and as part of

paying your claim, your insurer may have rights to that damaged property. Most property policies obligate policyholders to provide a sworn “proof of loss” and to submit to “examinations under oath,” which is often a recorded statement. Make certain you understand the facts and your coverage when engaging in these coverage steps.

Most restaurants operate on leased premises, and you will need to evaluate the insurance and other provisions of your lease. It is quite possible that portions of a loss to the physical structure will fall under the landlord's insurance coverage. Leases also contain provisions concerning how rent is paid or deferred in the event of a “total loss” or other longer-term loss of the premises.

Pillsbury Can Help

Our insurance recovery lawyers have helped policyholder clients recover more than \$6 billion from their insurance companies. Our lawyers have handled disaster-related claims from the Great San Francisco Earthquake and Fire of 1906, to a host of recent catastrophes including Hurricane Katrina, the Gulf of Mexico well blowout and oil spill, to the 2011 Japan earthquake and tsunami. We have long provided insurance coverage advice to many restaurant companies ranging from some of the largest chains, to fine dining operations, to developing concepts. Not all claims require significant legal efforts, but often modest legal efforts provide material benefits.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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