Critical Insurance Coverage Issues Emerging in the Wake of Sandy

Report of Superstorm Sandy Working Group

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INTRODUCTION

Superstorm Sandy – the freakish result of a huge tropical storm colliding with a cold mass that turned the storm inland – ripped across the East Coast in late October 2012, causing unprecedented damage to coastal and inland areas lying in its path. Making landfall near Atlantic City, N.J. on the evening of October 29, the storm wreaked havoc on coastal areas from North Carolina to Connecticut, and as far inland as the Great Lakes. The storm caused tidal surges that inundated Lower Manhattan and flooded New York's airports, knocked out critical infrastructure including power, rail and subway systems, and destroyed tens of thousands of homes from the Carolinas to Connecticut. Physical damage estimates are in the range of $50 to 100 billion.

As significant as the physical damages were, Sandy's economic impacts are even greater. They include losses suffered by tens of thousands of businesses, many of which have suffered little or no physical damage but are injured nonetheless: the internet provider shut down due to loss of power; the retailer that lost business due to evacuation orders; the gas station operator unable to procure adequate supplies; or the airline catering company with warehouses full of spoiled food due to canceled flights. Numerous public companies, from airlines to phone companies, have reported material effects on earnings as a result of the storm.[1]

As is the case after any natural catastrophe, businesses affected by Superstorm Sandy promptly turned to their insurance carriers for help. Most businesses have by now notified their carriers and, for the most part, are engaged in the adjustment process, with many receiving interim or advance payments.

However, many insurance policyholders have been surprised by the significant obstacles insurers have placed before them in responding to their property and business interruption insurance claims. In many cases, business executives have been surprised by the limitations on the coverage they purchased, or by the positions insurers have taken on a host of issues. Likewise, many policyholders, faced for the first time with catastrophic business losses, are simply unaware of the sometimes nuanced coverage afforded by their policies, or of the critical case law interpreting such nuances.

On January 16, 2013, an unprecedented gathering of thought leaders occurred, bringing together senior claim advisors from some of the leading insurance brokers, law firms, claims consultants, and forensic accountants.[2] The purpose of the meeting was to catalogue and analyze the most significant coverage issues currently being confronted by businesses as a result of Superstorm Sandy. The most salient issues discussed are memorialized in this report. The authors and participants welcome your feedback. Email **Sandy@Pillsburylaw.com**

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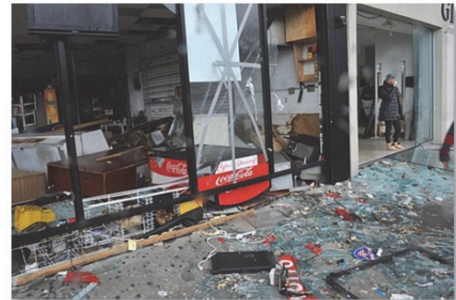
[1] Among the many publicly traded companies that blamed the storm for impacting income or operating margins were Starbucks, AT&T, Verizon, Federal Express, United Continental Holdings, Delta Air Lines, and even jeweler Zale and educational publisher Scholastic.

[2] The group included senior claim advisors from Willis, Lockton, BDO Consulting, Dempsey Partners, FTI Consulting, and two leading coverage firms (Pillsbury and Dickstein). Following the meeting, additional commentary was received from other senior claim advisors and advocates as well. This report has been reviewed by and reflects input from individuals from these groups, but does not reflect the official position of any organization.

CRITICAL INSURANCE COVERAGE ISSUES ARISING FROM SUPERSTORM SANDY

"Named Storm" vs. "Flood" Coverage

One of the most important insurance coverage issues emerging from Superstorm Sandy arises from the fact that in recent years property insurers have attempted to reduce the "saturation" or exposure to flood risks in Northeast coastal areas by reducing policy sub-limits and increasing deductibles. While many insurers restricted coverage for "Flood" perils in this fashion, in many policies they did not include similar limitations on coverage for "Named Storm" perils. Many policies categorize certain counties in New York, Connecticut and New Jersey as high-risk flood zones, but low-risk areas for Named Storm perils. The assumption was that the likelihood of a "Named Storm" walloping the tri-state area was remote (despite a close call in 2011 from Hurricane Irene) – particularly in comparison to the likelihood of a Flood event.



Yet as Sandy hit business with a double-whammy of hurricane force winds and resulting flooding, many insurers (and policyholders) have argued (or assumed) that the lower sub-limits and higher deductibles for Flood perils should apply. This has led to a significant number of disputes, and in cases in which policyholders are not aware of this distinction, the loss of coverage.

There is little reported caselaw on this subject, but what precedent is available tends to support policyholders on the issue of coverage under a Named Storm sublimit/deductible when, as is commonly the case, the policy provides overlapping definitions of named storm and flood. Given the low probability of a Named Storm in the tri-state area, and the higher probability of a flood in coastal areas, policyholders could reasonably expect that flooding from a Named Storm would be subject to the broader grant of coverage available under Named Storm. Unless the policy provides otherwise, policyholders are not generally forced to elect the lower sub-limit when presented with two potentially applicable sub-limits. *See, e.g., Baylor College of Medicine v. Am. Guar. and Liability Ins. Co.*, No. H-02-1711 (S.D. Tex. Oct. 31, 2002) (finding that more than one sub-limit was applicable in a flood loss in part because the policy lacked unambiguous language limiting coverage to a single flood sub-limit); *see also, Audubon Internal Medicine Group, Inc. v. Zurich Am. Ins. Co.*, No. 07-4874, 2008 U.S. Dist. LEXIS 52583 (E.D. La. July 10, 2008) (permitting a policyholder to make a claim for 51 days' worth of coverage for loss resulting from Hurricane Katrina under two separate 21- and 30-day periods of recovery for CBI and Civil Authority by staggering application of the two periods rather than limiting to one coverage). Rather, policyholders are generally entitled to recover "under all available coverages provided that there is no double recovery." *See, e.g.*, *Cole v. Celotex*, 599 So. 2d 1058, 1080 (La. 1992).

Given the significantly greater coverage typically available for Named Storm vs. Flood, in appropriate circumstances policyholders should carefully review their policy wording to determine whether Named Storm coverage may apply. Among the many related issues to examine are how the policy categorizes storm surge resulting from Named Storm, and whether it falls within the definition of Flood or Named Storm. Another important issue relates to policies that include a higher deductible for properties located in FEMA 100-year flood zones, usually expressed as a percentage (i.e., 5%) of the value. Significant disputes are arising, especially for high-value real estate and high-limit programs, as to whether that percentage applies to reported values for property and BI, or to the covered loss (which is generally much lower). Under some policies, insureds may have stronger arguments that the correct denominator is covered loss, especially where the language refers to "5% of the value, per the Valuation Clause," a reference to the section of the policy for determining

covered loss. (quoting FM Global Form).

Policyholders are already pursuing their rights to higher sub-limits for Named Storm coverage in New York courts. *See, e.g.*, Complaint and Motion for Partial Summary Judgment, *Fisker Automotive Inc. v. XL Ins. Am., Inc.*, No. 654571/2012 (N.Y. Sup Ct. Dec. 28, 2012; Jan 31, 2013) (arguing that $100 million Named Storm limit applies to transit loss that would otherwise be subject to $5 million sub-limit); *see also New Sea Crest Healthcare Center, LLC, and Shore View Nursing Home v. Lexington Ins. Co.*, No. 1:12-cv-06414 (E.D.N.Y. filed Dec. 28, 2012) (arguing Named Storm cover trumps $1 million Flood sub-limit).

CONCURRENT CAUSATION COVERAGE FOR LOSSES INVOLVING BOTH COVERED AND NON-COVERED PERILS

As the preceding discussion illustrates, Superstorm Sandy has compelled policyholders and insurers alike to scrutinize policy language and caselaw for guidance on the extent to which the loss is covered when caused concurrently or sequentially by perils that are covered (such as named storm, fire, or wind-driven rain) and also perils that are expressly excluded or sub-limited (such as flood or pollution). For instance, how does the policy respond under a Service Interruption provision when a retail business is forced to close due to loss of power caused by electrical arcing and fire damage to a transformer operated by an electric utility (a covered peril), when the fire was initially caused by flooding of the transformer (if, as in some cases, Flood is an excluded or severely limited peril under the policy)? Likewise, as with the Named Storm vs. Flood discussion above, the issue may also arise because the loss originated from Named Storm or wind, and the resulting storm surge, but the most immediate cause was flood -- yet the policy incorporates lower sub-limits or higher deductibles for Flood than for Named Storm or Wind.

Various theories have developed to address the issue of multiple or sequential causation, with some courts applying the broad doctrine of "concurrent causation," whereby coverage will be available if any one of the multiple causes of loss is a covered peril. Other courts apply the "efficient proximate cause" theory, whereby the fact finder looks at the circumstances of the loss to determine which cause was the dominant or efficient cause - - which may or may not be the initiating event in the chain of events. New York courts are somewhat split, but appear to favor the "efficient proximate cause" approach, requiring the fact-finder to analyze which cause was the legal or efficient cause, among various causes, choosing the dominant event as long as it is not too remote in time and space from the ultimate damage, and as long as the damage was reasonably probable and within the contemplation of the parties to the insurance contract. Thus, a federal appeals court applying New York law agreed with the district court's finding that a Lower Manhattan building's electrical switching panels that were damaged due to electrical arcing following a flood in the building was caused by the flooding, and not the electrical arcing. *See Continental Ins. Co. v. Arkwright Mut. Ins. Co.*, 102 F.3d 30 (1st Cir. 1996) (holding that a searching factual inquiry supports lower court's finding that flood deductible applies in lieu of electrical equipment deductible, in light of fact that "the flood waters came directly in contact with the electrical equipment in the Water Street Building, instantaneously precipitating the arcing which in turn caused the immediate short-circuiting and explosion that damaged the switching panels."). Note that New York courts sometimes apply the concurrent causation rule in certain circumstances. *See, e.g.,* Bebber v. CNA Ins. Co., 729 N.Y.S. 2d 844 (N.Y. Sup. Ct. 2001)(homeowners claim involving pool drainage). Connecticut appears to follow the efficient proximate cause rule. *See Frontis v. Milwaukee Ins. Co*., 242 A.2d 749 (Conn. 1968). New Jersey, on the other hand, appears to deploy a theory that combines the concurrent causation approach with efficient proximate cause. Following this view, one New Jersey court explained that "recovery may be allowed where the insured risk was the last step in the chain of causation set in

motion by an uninsured peril, or where the insured risk itself set into operation a chain of causation in which the last step may have been an excepted risk." *Stone v. Royal Ins. Co*., 511 A.2d 717, 720 (N.J. Super. 1986). The key to all of these cases, regardless of the prevailing rule, is that the analysis of causation requires a careful and searching inquiry into the circumstances of the loss, and is highly fact-specific.

The answer also depends on whether the policy employs "anti-concurrent causation" (ACC) wording in the particular portion of the policy excluding the peril at issue. Insurance companies have attempted to eliminate the need for courts to search for the efficient proximate cause or even to consider multiple causes by incorporating ACC clauses into certain exclusions in property policies. These clauses attempt to preclude any claim that involves the particular excluded peril, even if that is only one of multiple causes of the loss. Such clauses were challenged and examined in court following Hurricane Katrina and other recent catastrophes.

While some courts have upheld their application, a few states treat ACC clauses as unenforceable, predominantly on public policy grounds (notably California, West Virginia and Washington). Such courts consider these clauses unfair because they attempt to preclude coverage even when the predominant cause of loss is otherwise a covered event, and the excluded peril is a minor factor, thereby deviating from the ordinary expectations of the insured. This line of cases is premised upon the basic maxim that once coverage under a covered peril is established, it cannot be taken away because a subsequent sequential event is excluded. Likewise, courts have narrowed the vitality of ACC clauses by limiting their application to events that are truly simultaneous in time and space, or allocating between the excluded peril and the covered peril. New York and New Jersey courts have upheld anti-concurrent or anti-sequential causation clauses in denying homeowner claims, where the language of the clause was clear and unambiguous. *See, e.g., Jahier v. Liberty Mutual Group*, 883 N.Y.S.2d 283 (N.Y. App. Div. 2d Dep't 2009) (swimming pool lifting due to both covered earth movement and excluded flooding was not covered due to broad ACC clause in water damage exclusion that referred explicitly to pools); *Petrick v. State Farm Fire and Cas. Co*., 2010 NJ Super Lexis 1964 (2010) (mold exclusion with ACC clause precluded sequential loss due to structural damage to home). It remains to be seen how the courts will treat these clauses in the wake of the often wrenching factual scenarios arising from Superstorm Sandy.

CHALLENGES OF PROVING CONTINGENT BUSINESS INTERRUPTION LOSS

Although many companies have experienced loss due to "Contingent Business Interruption" – that is, the effect on the insured of damage to the property of its customers and suppliers – proving CBI loss presents significant challenges for policyholders. Policies usually offer little guidance on how the insured is to go about proving that their loss of business is attributable to the impact of a covered peril on their customers or suppliers. For example, as a condition to payment under CBI provisions, retailers in Lower Manhattan that suffered major losses because their customers were impacted are now being asked to prove exactly which customers were affected by the storm – a burden that is challenging to meet, and, in the opinion of most experts, highly unreasonable. Requiring policyholders to overcome such evidentiary burdens as a condition to coverage is almost certainly contrary to the reasonable expectations of the commercial insured.

In the best of circumstances, proving losses due to damage to a supplier is difficult for policyholders. The insured typically does not have access to the supplier's records, suppliers may fail to document their damages or repairs, and suppliers often have commercial reasons for not disclosing the cause or magnitude of their losses. The same is true of customers. In the case of gasoline station operators, for example, who were unable to secure adequate supplies due to flooding and closure of

tank farms and distribution facilities, insurers are requiring proof of damage to facilities of suppliers, who are not particularly open about their operations.

Adding to this challenge are recent revisions to CBI clauses requiring the insured to prove that the loss was "directly resulting from physical loss or damage" at or near the contingent time element location, or requiring the insured to "influence and cooperate" with the supplier or customer, and to "take reasonable and necessary action to mitigate the loss." *See* FM Global Form (2011). Policies should be reviewed carefully in this area, as coverage may apply not only to direct customers or suppliers, but to "indirect" customers/suppliers, to listed parties and properties, to Tier I and II customers/suppliers, and to customers/suppliers "of any tier."

Support from counsel and other claims professionals is helpful, if not essential, to successful recovery on such losses.

CIVIL AUTHORITY and INGRESS/EGRESS COVERAGES

Civil Authority

Civil Authority provisions, as typically included in property policies, provide coverage for an insured's business interruption losses resulting from orders of civil authority, such as evacuation orders, curfews, highway closures, and the like, which prevent or impair access to the insured's property. The governmental response to Sandy may provide a classic basis for application of this coverage because evacuation orders inhibited access to many insured locations. Airport and mass transit closures, beach and waterway closures, curfews, and evacuation directives, are each types of civil authority orders that could lead to insurance claims. In Lower Manhattan, building inspectors barred occupancy until owners had complied with a specified list of remedial measures.

The challenge in establishing Civil Authority coverage begins with the fact that most policies require that the governmental order be the result of physical damage "of the type insured," and not just a preventive or general public safety measure. Some policies require that the physical damage be within a limited distance of the insured's location. . *See City of Chicago v. Factory Mutual Ins. Co*., 2004 WL 549447 (N.D. Ill. Mar. 18, 2004) (finding no coverage for O'Hare Airport after 9/11 despite FAA ground-stop orders, where civil authority clause demanded physical damage "at the described location or within 1,000 feet of it"). At least one court has held that post-hurricane civil evacuation orders triggered Civil Authority coverage even without physical damage. *Assurance Co. of America v. BBB Service Co., Inc*. 593 S.E.2d 7 (Ga. App. Ct. 2003) (evacuation orders by local authority "because of the serious threat to the lives and property of residents" posed by Hurricane Floyd held to trigger coverage).

In the case of Sandy, insurers have resisted this coverage by arguing that while there were numerous orders impacting business -- orders to evacuate or remain at home in certain New Jersey counties, closure of the New Jersey Turnpike, and the like – the orders were not the direct result of physical damage, but rather to prevent harm to public health and safety. In some cases, the argument has been that the insured has not demonstrated the orders were the result of physical damage to property of the type insured, within a certain distance of the insured's premises, raising issues as to how to measure the distance from the insured premises to the point of closure of a critical road or other conveyance. Likewise, insurers have argued that the orders did not totally prevent or prohibit access. Policyholders will emphasize ambiguous policy wording and their reasonable expectations with respect to this coverage in seeking to overcome the insurers' various objections.

Ingress/Egress

In addition to orders of civil authority that restrict access to an insured property, Sandy-related physical damage may limit an insured's ability, or the ability of its customers or employees, to enter or exit its property. Ingress/egress coverage typically insures business interruption losses incurred when access to or from an insured's premises is "physically prevented" by the loss or damage. Even if a governmental authority does not issue an evacuation order, storm or flood damage may limit access to a business or property and result in business loss. Ingress/egress clauses can extend the business interruption coverage, at least where property damage "in the vicinity" restricts access to insured premises. This coverage is generally understood to include loss resulting from situations where flooding, downed power lines, road closures, snow, fire in the vicinity of the property, and other such conditions prevent access to the insured's property.

Disputes over Ingress/Egress coverage arising from Superstorm Sandy are similar to those noted with respect to Civil Authority – proof of physical damage, distance between damage and insured location, and whether access was actually "prevented," as opposed to merely impaired. These and similar issues will certainly be the subject of dispute in coming months.

Another key area of dispute with respect to both Civil Authority and Ingress/Egress coverage is the measurement of the period of indemnity. In most policies, these coverage grants are subject to sub-limits, either in the form of dollars or time period, and in some cases specific deductibles. As a result, where the loss exceeds the sub-limit, policyholders must rely on coverage extensions, such as Extended Period of Indemnity clauses, which may extend the otherwise limited coverage for an additional period of time, frequently 60-90 days.

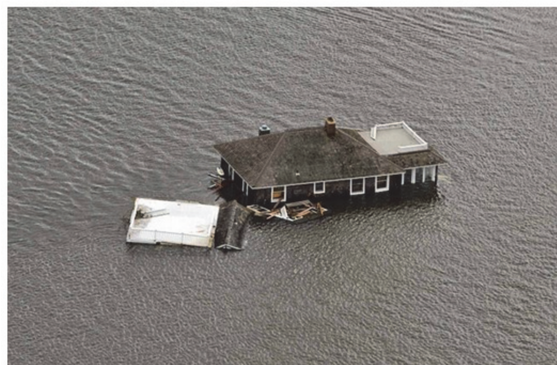
SERVICE INTERRUPTION

Likewise, disputes are arising under Service Interruption coverage, particularly with regard to whether the coverage applies to loss of power due to damage to electrical equipment off-site vs. on-site. Sandy caused as many as 8.5 million homes and businesses in 21 states to lose power at the peak of the storm, from South Carolina to Maine and as far west as Michigan. When utility services to insured premises are interrupted, service interruption coverage may be available to cover damage to property (e.g., spoiling of refrigerated food or medicine) and loss of income or extra expense. In connection with Sandy, millions of customers were without electricity, and others lost water, gas or sewage services. Service interruption coverage generally requires damage to the property of a utility supplier used by the insured, and sometimes includes requirements that the damage occur within a specified distance to the insured property, or even on the insured property. Service interruption coverage would typically apply to power outages where overhead power lines downed by a storm or physical disruption to a transformer or generating station prevent a manufacturing plant or hotel from operating normally. The coverage for such interruption can be substantial, including payroll incurred when the company is closed, loss from event cancellation, extra expense, contractual penalties and lost profits.

Disputes arising from Superstorm Sandy in this area seem to revolve around limitations in the coverage, which is typically subject to waiting periods (i.e., deductibles expressed as a number of hours or days), and whether the interruption exceeded that period, or how long service was interrupted. Other disputes involve whether coverage applies to loss because of damage to a "direct service provider's property" located away from the insured's premises. Some policies provide more limited coverage for off-premises damage than for on-premises damage to utilities. Another area of dispute, arising principally in middle market policies, is that some policies include endorsements adding Service Interruption and Flood coverage, but the endorsements appear to exclude service

interruption resulting from flood, which could curtail coverage. Policyholders with such limitations may nevertheless be entitled to pursue the Service Interruption coverage if the loss was due to other non-excluded perils, such as Named Storm, fire, and the like. (See discussion above, regarding Concurrent or Sequential Causation.) As always, careful review of policy language is necessary to evaluate any dispute in this area.

LOSS OF MARKET EXCLUSION AND AREA-WIDE IMPACTS



A significant issue emerging from Superstorm Sandy is whether businesses are covered for business income loss resulting from the area-wide impact of Superstorm Sandy. Many businesses, particularly in the retail sector, suffered (and in many cases are still suffering) from a decline in business due to the extensive damage to their customer base, thus magnifying or extending their losses well beyond the loss they would have incurred had the insured property experienced isolated damage. The generally accepted standard for measuring business income loss is, in layman's terms, the difference between the insured's expected earnings as of the moment of the loss, and the actual earnings following the loss. The key is the measurement of expected earnings at the time of loss. Insurers frequently attempt to use the area-wide impact of a natural disaster as a basis to argue that when the total demand for the insured's goods or services declines following a loss, the covered loss is limited to the loss measured against the lower total potential demand. The result would be that a dry cleaner that served 100 customers before the storm and 60 afterwards would be limited to the loss of business from the 60 customers, not the 100. Because the correct point of reference should be the state of the business at the moment of the loss, and the customers served at that time, the post-storm reduction in demand should not be used as the baseline for measuring the insured's losses. Some insurers have attempted to circumvent this result by adding express "area wide impact" language to either the loss of market exclusion or the policy's valuation provision. (*See* FM Global Form (2011)). Such language could frustrate the purpose of Business Interruption coverage by allowing the post-loss area-wide impacts to be considered in the measurement of loss.

Numerous other policy provisions may apply to these magnified or extended losses, including provisions relating to the "Period of Indemnity" and "Extended Period of Indemnity." Many commercial property policies contain an exclusion for "loss of market," which some insurers have attempted to interpose as a basis for denying coverage for Sandy losses in whole or in part. The leading case on the "loss of market" exclusion, litigated in a New York federal district court, rejected the application of the exclusion to area-wide impacts of a single storm event, holding that the "loss of market exclusion relates to losses resulting from economic changes occasioned by, among other causes, e.g., competition, shifts in demand, or the like; it does not bar recovery for loss of ordinary business caused by a physical destruction or other covered peril." *Duane Reade, Inc. v. St. Paul Fire & Marine Ins. Co.*, 279 F. Supp. 2d 235 (S.D.N.Y. 2003). In short, the loss of market exclusion should not be available to insurers as a basis to avoid paying for losses resulting from a catastrophic loss such as Sandy.

This issue is likely to lead to significant dispute with insurers and their adjustors as to both coverage and loss quantification. As a result, expert support in this area is highly desirable.

HURRICANE VS. TROPICAL STORM

An issue that is of lesser concern to commercial property policyholders than to residential policyholders, but of significance nonetheless, is whether Superstorm Sandy was a hurricane or merely a tropical storm. Residential policies typically exclude hurricane loss, and thus officials in the affected states have issued rules prohibiting insurers from asserting that Sandy was a hurricane.[3] The issue also appears to be affecting commercial policyholders where a policy contains an exclusion or a lower sub-limit for "Named Storm" than for "Wind" generally. Some insurers are contending that Sandy remained a "Named Storm" even though it ceased to meet the criteria for hurricane, i.e., 74 m.p.h. sustained winds (See **http://www.nhc.noaa.gov/aboutgloss.shtml#h**), prior to making landfall, and fell well beneath those criteria when it moved inland. Resolving such issues will require further analysis of policy language and the reasonable expectations of the insureds.

WAITING PERIOD CALCULATIONS

An issue that has led to frequent dispute in connection with prior catastrophes and is beginning to appear in Sandy claims is how properly to interpret a policy's "waiting period" or deductible when expressed in the form of a period of time – typically 48 hours or, in some cases, 30 days. The period is generally calculated from the date of first damage to a covered property. When, as is frequently the case, the method of calculation for the end point of the waiting period is not clear, disputes may arise.

In one case, an insurer is improperly arguing that a 30-day deductible for Time Element Loss operates as a qualifying period, such that a Contingent Business Interruption loss would not be insured unless the supplier's property was damaged and closed for at least 30 days, even though the supplier's closure caused the insurer to suffer loss for months thereafter. The Time Element deductible expressed as a period of time should be construed just like a deductible expressed as a dollar amount: if the policy extends the period of indemnity under an Extended Period of Indemnity clause, the fact that the closure or interruption did not exceed the deductible period should not preclude the policyholder from recovering the covered loss incurred after the deductible period. In examining policies in this regard, consideration should be given to whether different potentially applicable coverage grants can be used to fill in the gaps of coverage created by deductible waiting periods, allowing for sequential "stacking" of coverage.

At least one insurer is taking an unusually aggressive position in the wake of Superstorm Sandy, arguing that a 72-hour waiting period means nine working days, on the grounds that the business is only open eight hours per day. This is surely contrary to the insured's reasonable expectations and custom and usage, given the common understanding that 72 hours means three full days. Again, careful review of policy language and an understanding of the purpose and function of waiting periods and deductibles is essential to addressing Sandy claims.

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[3] See, e.g., *Insurance Journal*, "Hurricane Deductibles Will Not Apply for Sandy-Related Claims in Conn." (October 31, 2012; http://www.insurancejournal.com/news/east/2012/10/31/268613.htm); "No Hurricane Deductibles for Sandy Claims in New Jersey, Maryland (October 31, 2012; http://www.insurancejournal.com/news/east/2012/10/31/268670.htm); and "N.Y. Gov. Cuomo: New Yorkers Won't Have to Pay Hurricane Deductible for Sandy" (November 1, 2012; http://www.insurancejournal.com/news/east/2012/11/01/268718.htm).

CONCLUSIONS

After striking a heavily populated area and wreaking unprecedented destruction, Superstorm Sandy leaves a legacy that will have lasting repercussions for the field of insurance coverage. Major disputes with insurers, including some already in the courts, willchallenge conventional wisdom regarding flood and named windstorm coverage. In one sense, we have all been here before – numerous issues raised and litigated with respect to Hurricane Katrina and other catastrophes are emerging again, including multiple causation, area-wide loss, and the stacking of sub-limits to maximize coverage. As in every catastrophe, however, the unique aspects of Sandy are presenting new challenges and opportunities to maximize coverage. One point on which all those knowledgable about these nuances agree is that the challenges normally inherent in presenting time-element claims are dramatically magnified with Sandy. That fact strongly militates in favor of retaining expert claims advisors to maximize recovery.

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