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## Preserving and Maximizing Insurance Claims in the Aftermath of Hurricane Irene

by Peter M. Gillon, Vince Morgan and James P. Bobotek

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*Hurricane Irene has caused immense damage to the East Coast with loss estimates in the billions. Those affected face many challenges as they begin the recovery process, including impaired utility services, water damage, accessibility problems and supply-chain disruptions. Fortunately, many corporate policyholders have insurance coverage available to assist in the aftermath of this tragic event. Taking a few proactive steps will help maximize that coverage.*

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Insurance claims arising out of natural disasters such as Hurricane Irene can be very complex, both in terms of sheer scope and the legal issues involved. Irene caused not only billions of dollars in property damage through wind, rain, and flooding, but also exacted a heavy toll on commercial business operations as a result of power outages, evacuations, and transportation route closures. To help with the claim process, we have prepared this Advisory to provide a basic outline of some key issues to keep in mind as restoration and recovery efforts continue.

### **Obtain and Evaluate Policies**

As an initial matter, it is crucial to obtain, review, and evaluate all insurance policies for potential coverage. Quickly understanding the insured's rights and obligations based upon a thorough review of the policy or policies is vital to maximizing the insurance recovery. If the policies themselves have been lost or destroyed, request copies from the broker.

### **Place Insurers on Notice**

Notifying each insurer as soon as possible is one of the most important steps to preserving the insurance recovery. Notice just means telling the insurer you suffered a loss; details to follow. Most insurance policies include express instructions for providing notice to the insurer. These instructions should be followed carefully. The insurance agent or broker should also be notified of the loss. Make sure to notify all insurers that may provide coverage, including excess and umbrella insurers.

## Document the Loss

Properly documenting the loss or damage to property is crucial. This includes not only property that was damaged by the storm, but also any property rendered unusable in the days following Hurricane Irene. Before undertaking any restoration activities, at minimum, document the damages with photographic evidence. 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 hurricane-related damage. It may be prudent to engage professional claim consultants to assist in the loss assessment and quantification phase. Remember that insurance company adjusters work for your insurer, not your company. If you need an advocate, hire your own.

## Follow the Policy to Preserve the Claim

After initial notice of loss, most property policies also require that the insured later submit a sworn “proof of loss” to catalogue the damages. Many policies require the proof of loss to be submitted within a fairly short period after the event. Insurers are usually amenable to extending these deadlines, but make sure that any extensions are memorialized in writing. In addition to notice and proof of loss, insureds must also preserve and protect the property from further losses, including any and all necessary mitigation activities taken to prevent additional damage. Such expenses are often covered under the property policy, so they should also be documented. Lastly, the insurer may have salvage rights to the impaired property, so it is important to preserve any salvageable property to the extent possible.

## Assess all Possible Coverages

With respect to hurricane-related damages, first-party policies such as commercial property policies are the ones most likely to provide coverage for an insured's own losses. Although residential policies frequently exclude flood loss, flood may be covered under commercial policies. In addition to providing coverage for physical damage to an insured's property, many commercial property policies also include coverage for losses due to the interruption of the insured's normal business activity, such as lost revenue or profits. Business interruption and related time-element losses may quickly exceed physical damage claims, and may well constitute the majority of insured losses. Disruption in power and other utilities may trigger extended coverages, such as service interruption coverage. Likewise, curfews, prohibitions against entry and physical obstructions to roads may trigger civil authority or loss of ingress/egress coverage. Finally, there may still be coverage even if the insured's property was not physically impacted by the storm, as disruptions to certain suppliers and/or customers may result in covered “contingent business interruption” losses.

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