

While Hurricane Katrina is Over, the Insurance Industry is Just Beginning to Total the Losses and Consider Coverage Issues. Expect Litigation and Increased Insurance Prices.

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The damage estimate for Hurricane Katrina is at least \$60 billion. Katrina's catastrophic losses and their ripple effects will have far-reaching impacts on the insurance industry and the corporate bottom line as expenses for the cost of insurance will likely increase. Currently, risk managers are faced with the difficult task of attempting to determine total losses in an area which remains both under government control and difficult to reach. Both risk managers and claim handlers are faced with considering the effects of the combined unique circumstances of flooding, wind damage and levee breaches, in conjunction with the fact that a tourist destination and energy center are now abandoned and currently uninhabitable.

According to Business Insurance magazine, "the destruction of New Orleans as well as the devastation in Biloxi, Mississippi, not only impacts the indefinitely sidelined local businesses--- such as energy companies, agricultural businesses, hotels, casinos and retailers. [But], many businesses elsewhere in the country also are sustaining contingent business interruption losses as a result of losing key suppliers or customers on the Gulf Coast....An official with the New York-based Insurance Information Institute has said business interruption losses could account for 40% of the \$40 billion to \$60 billion of insured losses that catastrophe modelers estimate Katrina has caused. That percentage would be higher than normal for a natural catastrophe." (September 12, 2005; pp. 1 and 54).

As is true in unique loss situations, such as that created by Katrina, it is not unusual for coverage issues to develop between the insurance companies and their insureds. It is likely that losses encompassing gross earnings or lost profits and the expenses which exist due to the loss, commonly referred to as business interruption losses, will be difficult to work through because of the facts of Katrina. For example, there is often an exclusion in business interruption policies that precludes coverage when an insured's market no longer exists. There may be an issue as to the interpretation of this exclusion as insurers may argue that markets no longer exists as they were destroyed by Katrina. Another coverage issue

may exist if it is determined that losses arise from both covered and uncovered perils, such as if flooding is excluded from coverage but wind is not. Even now, some of the insurance industry spokespeople have indicated that coverage may depend upon which peril damaged the property first.

Perhaps two of the major issues that may be litigated between insurers and their policyholders are the "act of God" and pollution exclusions. The "act of God" exclusion typically provides that coverage is not afforded if the damage is caused by an act of God. One lawsuit has already been filed in Louisiana state court seeking a declaration that the losses in New Orleans were caused by poor levee design, which allowed the flood to occur, rather than by an act of God. The pollution exclusion was heavily litigated



throughout the U.S. in the late 80s and 90s with respect to hazardous waste and asbestos claims. Because of the contaminated waters and residue throughout New Orleans and other areas, it is likely the pollution exclusion will be central to the insurance companies' positions on coverage.

Policyholders should be ready to respond to their carriers' positions to ensure that they receive the maximum insurance to which they are entitled. Accordingly, policyholders should consult counsel prior to and during the claim notification and handling process.

It is important that policyholders be apprised of the insurance law and court rulings in the areas of coverage which may affect their corporate bottom line. The insurance industry has already begun using its professional assets and counsel to assess its policy positions and payouts. Your corporation should do no less to protect its assets and to ensure that it receives all that it is entitled to from its insurers.

It is just the beginning for insurance issues. Make sure your corporation is ready to respond in a manner that protects and replenishes its assets and ensures it is ready for the likely increase in insurance pricing.

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