Gilbert LLP

What Gilbert LLP Wants You To Know
About Insurance Coverage For Superstorm Sandy

Insurance coverage may be available for companies both within and outside of the directly-affected area.

Superstorm Sandy no doubt will go down in history as one of the Nation's most costly natural disasters. Some experts already have estimated that property damage alone could be measured in the tens of billions of dollars, and companies both inside and outside of the directly affected area may sustain costly business interruptions or may be unable to obtain the supplies they need to keep their businesses operating. Many companies, both in the directly-affected area and those whose supply chains or customers have been disrupted, may be able to recover insurance to help them rebuild, even if those companies have not actually sustained any property damage.

If you have sustained direct property damage, Gilbert LLP wants you to know . . .

- *You probably have coverage.* Insurance often purchased by business owners typically covers damaged buildings, vehicles, equipment inventory, records, and other property.

- *Your policies may cover flood damage*. Many corporate business property policies expressly cover both flood and wind damage, sometimes subject to special terms or limitations. Even if there are exclusions for flood or wind damage, companies may be able to establish coverage through other causes, such as fires or outages caused by the storm.

- *Hurricane deductibles should not apply*. Some policies have special deductibles for hurricane-related damage. Sandy, though, likely was not classified as a "hurricane" when it made landfall, and damages thus may not be hurricane-related. Regulators in both New York and Connecticut already have declared that hurricane deductibles should not apply here.

- *You may have coverage for lost profits and extra expenses due to business interruptions*. Most business property policies cover losses that occur when a company loses profits due to physical damage to its own facilities. These policies also often cover extra expenses that businesses incur to mitigate losses, potentially including expenses of shifting production from a damaged plant to other facilities.

- *You may need to consider liability insurance as well as property insurance*. Because business interruptions sometimes can lead to interruptions in providing goods or services to your customers, some customers may seek indemnity or file a claim against you for their consequential losses. You may have coverage for these third-party claims under your general liability policies, and you should provide prompt notice under those policies if circumstances warrant it.

If you have incurred losses but not sustained physical property damage, Gilbert LLP wants you to know . . .

- *You may be covered even absent physical property damage.* Even if your facilities or offices sustained no physical property damage, you still may have coverage under most property policies. Many policies cover losses without physical property damage under multiple policy provisions:

  - *Civil Authority Provisions*: These provisions cover business interruptions caused by acts of a civil authority, such as an evacuation order, curfew or road closure. Sometimes, the act of civil authority must meet specified criteria regarding the type or duration of the act of civil authority.

  - *Ingress/Egress Provisions.* These provisions cover business losses because of a sustained inability to enter or leave your facility. Policies may require the disruption to be of a minimum duration.

  - *Service Interruption Provisions.* These provisions cover business losses because of an interruption in key services, such as power or phone outages.

- *The costs of preparing for Superstorm Sandy may be covered*. Many business property policies provide coverage for costs incurred to prevent or mitigate imminent damage. Such expenses may be covered under a property policy's "sue and labor" provision or under common law. Because reasonable steps taken to prepare for and minimize losses saves insurers money, insurers should pay for these efforts.

- *Coverage for losses without physical property damage vary substantially*. Coverage for business losses absent physical property damage vary considerably from policy to policy and from business to business. These variations might derive from very subtle differences in policy language, but these variations sometimes have been outcome determinative. It is critical that companies are aware of the potentially legally significant differences before characterizing their claim to their insurers.

If you have losses because a supplier or customer sustained damage, Gilbert LLP wants you to know . . .

- *Supply chain losses may be covered*. Many property policies cover "contingent business interruptions." This coverage pays for lost profits and extra expenses incurred due to property damage sustained by a company's suppliers and/or customers. It thus applies when a company cannot obtain the components or ingredients to make its own product, or if it cannot get its product to its customers.

- *Coverage may apply to companies well outside of the directly affected area.* Because the storm affected much of the Northeastern seaboard, significant supply chain interruptions may result. These supply chain interruptions may affect companies well outside of the areas directly affected by the storm.

- *Damage even to indirect suppliers and customers may be enough*. Many supply chain disruptions may result from damages or interruptions not from direct supplier or customer, but only from your supplier's supplier or customer's customer. These indirect disruptions may be enough to trigger contingent business interruption coverage.

Regardless of the type of loss you may have sustained, Gilbert LLP wants you to know . . .

If your company incurred losses, or may incur losses, due to Superstorm Sandy, you can and should take steps now to best position yourself to secure coverage if and when the need arises. Gilbert LLP wants you to know the following five steps that you can effectuate immediately to make sure that you maximize the chances of a good insurance recovery.

- *Collect and review all relevant policies, not just ones sold directly to your business*. Locate a copy of all potentially applicable policies or request replacements from your agent or broker. You should also attempt to identify and obtain policies issued to other businesses that may also provide coverage, including others in the supply chain that may name you as an additional insured.

- *Comply with time requirements, or work with your insurer to extend deadlines.* Most property policies contain tight deadlines for complying with certain coverage requirements. Policies often contain strict notice requirements, short time deadlines for filing proofs of loss, and strict limitations on when you can sue the insurer. General liability and other policies sometimes contain similar time requirements. If you do not think it is feasible to comply with these requirements, communicate now with your insurer to negotiate an extension or tolling arrangement.

- *Set up communication protocols*. If you do not already have protocols in place for communicating both internally and externally about losses and insurance issues, put such protocols into place immediately. Such protocols are important to help protect against inadvertent or inconsistent characterizations regarding the nature or causes of losses. Businesses should consider involving in-house or insurance counsel in internal communications. Moreover, you should ensure that you keep your insurers informed of efforts to value or mitigate damages and to reopen your business after the loss, and you should consider putting into place confidentiality and non-waiver agreements with insurers.

- *Inventory and account for your losses, including your lost profits*. Prepare an inventory of damaged or lost property, including, if possible, photographs and/or videotapes of property damage. Keep receipts regarding all expenses incurred and profits lost, including expenses to protect or repair property.

- *Do not inadvertently release your insurers*. Carefully review checks and other written communications and payments from your insurance company that may include language that releases the insurance company from any future claim that you may need to make.

About Gilbert LLP

Gilbert LLP is a Washington-based law firm that focuses its practice on insurance recovery for businesses of all sizes. Our firm has a national reputation for effectively advising corporate clients on their risk management programs, negotiating with insurers to recover insurance proceeds, and litigating cutting-edge insurance coverage disputes on behalf of policyholders. Our lawyers have recovered billions of dollars from insurers. For more information, contact Jonathan Cohen at cohenj@gotofirm.com or Barry Buchman at buchmanb@gotofirm.com.