



Guest Commentary

In Irene's Wake, Policyholders Should Know Their Rights

Tree removal, business losses, damaged furnishings may all be covered

By RYAN SUERTH

It is not likely that before Hurricane (a/k/a Tropical Storm) Irene swept through Connecticut's shoreline, home and business owners had spent much time reading the insurance policies they purchased to protect their homes and businesses. For most insurance policyholders, ensuring that policies are in place and premiums are paid is the extent of their interest in insurance coverage. That being said, now that Irene has left behind a trail of damage and destruction, affected policyholders should understand what coverage they are entitled to.

Property Policy Coverage

Property insurance policies like homeowners and commercial property policies provide coverage for physical damage to a policyholder's property, provided that the damage is caused by a covered cause of loss and the damaged property is covered property.

With respect to cause, if a particular policy is an "all risk" policy, all causes of loss are covered, unless expressly excluded. If, on the other hand, a policy provides coverage for "named perils," then only those causes of loss listed in the policy will result in coverage. Some basic named perils include fire, lightning, vandalism and windstorm. With respect to the types of property covered, property insurance policies typically cover the home or business structure itself, its fixtures, and the personal property located inside (e.g., furniture, televisions, computers, business inventory). Land, money and vehicles are some examples of items that are often not covered.

Certain additional coverages may apply for debris removal, outdoor property, and even loss of electronic data, to name a few. These additional coverages may be subject to reduced amounts of coverage, or sublimits. Furthermore, as with any insurance policy, property policies also contain exclusions which expressly prohibit coverage for certain losses. Two common and relevant property policy exclusions are mold and flood damage exclusions. Note that flood exclusions do not exclude coverage for all water damage.

Fallen Tree Removal

Perhaps the most obvious evidence of Irene's force is the number and size of fallen trees in Connecticut. If a tree fell at a covered location, but did not hit or otherwise damage a covered structure, there may be additional coverage for tree removal. However, the sublimit for such coverage may be inadequate to cover the full cost, as tree removal can be expensive. But if a tree fell on a covered structure, the removal of the tree may not be subject to any sublimit because it is part of the repair of that structure.

Additionally, if a tree on a policyholder's property fell on someone else's property, there may be liability coverage under a homeowners policy, a business's commercial general liability policy, or an umbrella policy.

Lost Business Income

Physical damage to property was not the only impact of Irene. Connecticut businesses have suffered loss of revenue due to

Irene. Property insurance policies issued to businesses may include coverage for business interruption intended to compensate businesses for money they would have earned had

events like Irene never occurred.

Business interruption coverage applies when there is physical damage at a covered location that keeps the business from conducting its normal operations and reimburses policyholders their expected revenue, less any non-continuing expenses during the relevant period. Business interruption coverage may also apply to additional expenses incurred to continue normal operations and when physical damage occurs away from a covered location to property upon which a policyholder's business depends.

The bulk of business loss resulting from Irene may very well have been caused by the unusually long power outage. Business interruption due to power outage may be excluded under a business's property insurance policy, and if covered, there may be limitations which render such coverage inapplicable to Irene. In addition, some business interruption coverage may include a deductible that is time-based, meaning that the coverage is not implicated until the business has been interrupted for a certain number of days.



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Hurricane Deductible

One insurance issue that has already come out of Irene is the applicability of hurricane deductibles. Deductibles are, essentially, the dollar amount a policyholder must pay out of pocket before an insurance company pays any of its own money towards a claim. A policy containing a hurricane deductible may require a policyholder to pay a higher deductible when damage is caused by a hurricane. This begs the question as to how a hurricane deductible can apply to damage caused by Irene when Irene was downgraded to a tropical storm before she hit Connecticut.

If a hurricane deductible is broadly written, it may also apply to tropical storms or other named storms. Moreover, some deductibles may be written so broadly that they do not distinguish between hurricanes and any less severe windstorm. Certain insurance companies have agreed to waive their hurricane deductibles for damage caused by Irene. It is unclear, however, whether such deductibles would have applied in the first place.

Notify Insurance Company

After Irene hit, many policyholders were focused on quickly repairing their homes or getting their businesses up and running again. They may not have been focused on insurance coverage, or did not have time to notify or wait for, in some instances, their insurance company.

To the extent they have not already done so, policyholders who have sustained loss or damage due to Irene should immediately notify their insurance company. Insurance companies can, and do, use late notice by

policyholders as a basis for denying coverage. Accordingly, even if policyholders are unsure as to whether their policy covers their particular loss or damage, they should notify the insurance company anyway.

Complete Copy Of Policy

When notifying the insurance company of loss or damage, policyholders should request a complete copy of their policy, even if they already have what they believe to be a complete copy. Insurance policies are comprised of several parts and/or documents and requesting a complete copy of the policy from the insurance company can ensure that the policyholder actually has the entire policy.

Insurance policies contain one or more declarations pages which set forth basic policy information, such as the policy number, the effective dates, the types and amounts of coverage, and the amount of any deductibles. The declarations pages are followed by an insuring agreement setting forth what is covered, what is not covered (or excluded), definitions, and the policyholders' responsibilities (*e.g.*, providing timely notice). Finally, insurance policies often contain endorsements that change certain terms in the policy.

Policyholders should ensure that their insurance company does not simply send them the declarations pages; in and of themselves, the declarations pages mean very little. The entire insurance policy consists of the declarations pages, the insuring agreement, and any endorsements.

Question The Insurer

Generally, the language contained in an insurance policy, and nothing else, dictates

whether a claim is covered or not. An insurance policy is a contract like any other, and an insurance company is bound by its terms. Importantly, if an insurance company tells a policyholder that a claim is not covered, it does not mean that this is the correct answer.

The meanings of various insurance policy terms are continuously litigated throughout the country, because often times an insurance company may look at a policy and contend that there is no coverage for a certain claim, while a policyholder will look at the same policy and believe that there is coverage. Sometimes, coverage for multi-million dollar insurance claims can turn on how a particular court will interpret the meaning of a single word in an insurance policy.

Common disputes between policyholders and insurance companies include the applicability of particular coverages and exclusions, the amount policyholders are entitled to for an otherwise covered claim, and the applicability of deductibles. In Connecticut and elsewhere, policyholders have a leg up in these disputes. Because insurance policies are written by the insurance companies, terms that are ambiguous, or susceptible to more than one reasonable interpretation, are generally construed in favor of the policyholder as a matter of law.

Insurance companies that have wrongfully denied coverage to policyholders are liable for breach of contract under the laws of Connecticut. Policyholders should not be afraid to push back against insurance companies in whatever manner they believe is appropriate, including filing a lawsuit—sometimes this is the only way to get an insurance company's attention. ■