



Protecting Insurance Coverage Immediately After a Disaster

Racked by tornadoes and the flooding Mississippi River, southern states have recently sustained billions of dollars in property and business income losses with more to come as the Mississippi River crests. Insured property damage and business interruption losses resulting from the April tornadoes and violent storms alone are estimated at \$3.7 billion to \$5.5 billion. Hundreds of millions of dollars in additional losses are expected if the Mississippi River breaks record levels set in 1927, when flooding displaced 600,000 people and caused nearly \$624 million in damages (in today's dollars).

Many businesses and individuals may have purchased insurance policies that insure some or all of these losses. Potential insureds should act now to protect the value of any insurance coverage available for property and business income losses.

Collect and Review Available Insurance Coverage

Property owners should locate a copy of all potentially responsive policies, including primary, umbrella, and excess property policies and review them for available coverage. If you anticipate evacuating your home or business due to the rising Mississippi River, ensure that you take your insurance policies with you. If you cannot locate your policies or they are destroyed, request that your broker provide you with a copy.

Notify All Insurers

Carefully read your policies' notice provisions and comply with them. Most policies require prompt notice "as soon as practicable" or "as soon as possible" after a loss. You should immediately call your insurers and/or your broker, but also follow up with prompt written notice to your insurers at the address designated in each policy. Include your name, policy number, and the date of the loss.

Protect Your Property

Take any immediate reasonable steps available to protect your property. Ask your insurer if it will send an emergency response team to assist you with emergency mitigation measures. Unless your property is totally destroyed, you may take reasonable mitigation steps to prevent further damage to your property.

Document the Property Damage or Loss

Photograph the damaged property, both real and personal, as soon after the loss as it is safe to do so. If possible, videotape the entire scene to establish evidence of your loss. To the extent that you cannot document the damage, you may need to use other sources of evidence, such as bank or credit card records, to establish the extent of your loss. You will also need to provide an inventory of damaged property to support your claim. Keep receipts for all expenses related to your loss, including expenses incurred in mitigating the damage, as well as additional living expenses if you are forced to relocate. If you are anticipating rising Mississippi floodwaters, videotape your property before the waters arrive to support your claim.



Comply with Your Policies' Requirements and Deadlines

In addition to requiring prompt notice, your policies may impose specific deadlines (e.g., 30 days notice of certain events). Insurers can argue that failure to comply with these deadlines forfeits coverage, so strict compliance is critical. Your policies may also require insurer advance approval for certain expenses; insurers can argue that failure to obtain advance consent waives coverage for the particular expense in question. Some policies, particularly commercial property policies, require insureds to submit proofs of loss within a relatively short time period (sometimes in as little as 30 days). Your insurer may grant an extension, but you should obtain any extension in writing.

Cooperate with Your Insurers

Your insurers should send a claims adjuster to your property to assess the loss and recommend a disposition of your claim. Be courteous, provide access to the property, and let the claims adjuster do his or her job, which is assessing the nature of your property damage and making a coverage recommendation to the insurer. Do not characterize the nature of your claim until an attorney reviews your policy and advises you on the availability of coverage. Do not agree to provide a written statement until you have consulted with an attorney.

Document Communications with Your Insurers and/or Broker

Keep notes of your oral communications with your insurance company, agent, and/or broker. Note the date and times of conversations, the subject, and any positions regarding coverage. Be mindful that your communications with your broker and/or insurer may not be privileged in any resulting litigation.

Avoid Releasing Your Claim

If your insurer sends you advance payments, confirm that the check does not include any language suggesting full payment or full satisfaction of your claim. In certain jurisdictions, depositing such a check could waive the remainder of your claim.

Seek Legal Advice

Like Hurricane Katrina claims, the insurance claims arising from the recent tornadoes and Mississippi River floodwaters will be complex. Coverage will depend on nuances in policy wording as well as governing state law, which may differ from state to state. Seek an independent assessment of the availability of coverage from an attorney experienced in insurance coverage issues so that you can best be positioned to support your claim for coverage.

Our Insurance Coverage Team

Our insurance coverage team consists of attorneys experienced in policyholder insurance coverage, including coverage for losses arising from Hurricane Katrina, the May 2010 Tennessee storms, and other natural disasters. Please contact any of the attorneys mentioned below for more information or assistance with insurance related questions.

Katherine J. Henry

Katherine J. Henry, the policyholder coverage team leader, represents policyholders seeking insurance coverage for all types of liabilities, including property damage and business interruption claims. She has advised insureds on the availability for insurance coverage arising out of the May 2010 Tennessee storms and is currently handling several matters in litigation or pre-litigation arising out of those storms. Katherine's past and present policyholder clients include the world's largest automaker, the world's largest home improvement specialty retailer, a major utility company, a major lender, numerous health care-related entities, a private-equity investment firm, several distributors of welding products, and a national trade association for the gases and welding industries.

David K. Pharr

David Pharr, based in the Firm's Jackson, Mississippi office, has experience litigating and negotiating hurricane damage and Tennessee May 2010 storm claims. He has written articles on the availability of coverage for claims like those now at issue. David regularly counsels businesses and organizations in matters related to insurance coverage. He is Vice-Chair of an American Bar Association committee on insurance coverage litigation and Chair of the Jackson Chamber of Commerce.

Alex Purvis

Alex Purvis, based in the Firm's Jackson, Mississippi office, focuses his practice on negotiation and litigation of complex insurance coverage and products liability matters. Alex has handled all stages of the litigation and dispute resolution process in coverage matters from initial case consultation through appeal. Mid-South Super Lawyers recently recognized Alex as a "Rising Star" in the insurance coverage area.

John Watson

John Watson, based in the Firm's Birmingham, Alabama office, is a general litigation partner with experience handling insurance coverage matters, products liability, personal injury defense, consumer class action, general commercial, and securities fraud cases. John is also interested in technology and professional responsibility matters, and has served as one of the Firm's loss prevention counsel.

Robert S. Patterson

Bob Patterson has spent the last 31 years representing businesses in complex litigation in courtrooms from California to Florida. He is a trial lawyer who understands business as well as insurance issues. Through his years of experience as a trial lawyer and his involvement in firm governance and community leadership, Bob combines business acumen with courtroom experience to assure his clients informed and zealous advocacy at every stage of litigation from the initial pleadings through discovery and trial.



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