



Protecting Insurance Coverage Immediately After A Disaster

Property owners sustaining losses resulting from the unprecedented recent rains in Tennessee may have insurance coverage available to respond to some or all of their losses. This whitepaper provides a checklist of steps that affected property owners should take now to conserve and protect their insurance coverage.

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 automobile policies and review them for available coverage. 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 and policy number and the date of the loss. Do not describe the perceived cause of the loss, e.g., surface water or flood, but instead describe the loss as arising from the rain.

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.

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 adjustor to your property to assess the loss and recommend a disposition of your claim. Provide the adjustor access to the property. Be courteous to the adjustor, who will be the first arbiter of your claim, but also be cautious of characterizing your claim until you thoroughly understand the basis for insurance coverage. Emphasizing that your property damage was caused by surface water flooding, for example, could be detrimental to your claim if your policies exclude damage from “flood” or “surface water.” Likewise, characterizing your loss as the result of a leak through your foundation could implicate another exclusion to coverage. During the claim’s adjustor’s examination of your property, the best course is to be courteous, provide access to the property, and let the claims adjustor do his or her job, which is assessing the nature of your property damage and making a coverage recommendation to the insurer.

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.

If in Doubt, Seek Legal Advice

Like Hurricane Katrina claims, the insurance claims arising from the recent rains in Tennessee are likely to be complex. Coverage will depend on nuances in policy wording as well as Tennessee case law interpretations. 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 includes attorneys experienced in policyholder insurance coverage, including losses arising from Hurricane Katrina and other natural disasters. Please contact any of the team leaders mentioned below for more information or assistance with insurance related questions.

Katherine J. Henry

Katherine J. Henry represents policyholders seeking insurance coverage for all types of liabilities, including mass torts (such as asbestos, environmental, and welding), D&O and E&O, financial liabilities, and first-party property damage. Her 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 industry.

Katherine also provides clients with strategic advice and solutions for complex legal disputes. Her experience includes formulating a litigation and negotiation strategy that led to the industry-wide settlement of claims brought by the entire payphone industry as well as crafting a nationwide insurance coverage strategy for welding distributors. She is an effective appellate advocate and has appeared before numerous federal and state appellate courts, including en banc panels, on a wide variety of matters.

David Pharr

David Pharr, based in the Firm's Jackson, Mississippi office, has experience litigating and negotiating hurricane damage claims. He has written articles on the availability of coverage for claims like those now at issue in Tennessee. 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.

Rob Dodson

Rob is a member of the firm's Litigation and Construction Practice Groups and regularly represents clients in construction, products liability, environmental and toxic tort, and commercial litigation. All of these practice areas touch the construction industry and the oil and gas industry, and Rob's experience in these fields allow him to advise his clients with a broad perspective. Rob's experience enables his clients to minimize their risks on the front end and to maximize their recoveries when problems arise. Rob has successfully tried numerous cases in state and federal courts as well as arbitration forums.

Robert 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. 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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