LITIGATION MINUTE: EXTREME WEATHER AND NATURAL DISASTERS: INSURANCE TIPS FOR COMMERCIAL POLICYHOLDERS

ESG LITIGATION SERIES: PART ONE

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WHAT YOU NEED TO KNOW IN A MINUTE OR LESS

Storms and hurricanes, isolated but powerful tornados, earthquakes, fires, and floods—the question is not whether, but where and when policyholders will confront the next natural disaster.

Aon's 2023 Weather, Climate and Catastrophe Insight Report concluded that global natural disasters in 2022 resulted in average economic losses totaling nearly US$313 billion—4% higher than the 21st century average. The insurance sector is reported to have covered US$132 billion worth of losses. Extreme weather events are expected to increase in both frequency and intensity around the world.

With the inevitable consequence of commercial policyholders turning to their insurers to provide coverage in the case of extreme weather events, careful and proactive attention to insurance coverage considerations could be the key to restoring business operations and weathering the consequential financial storms.

Potentially Relevant Insurance Policies

It is vital for affected businesses to review all relevant or potentially relevant insurance policies promptly, including excess-layer policies, and to comply with loss notification procedures. There are likely to be a variety of losses and liabilities that arise out of a natural disaster, depending on the circumstances of the particular business and the scope of its operations. Potentially responsive policies may include:

Property Damage and Business Interruption

These policies provide coverage for a variety of first party losses, including:

- Property damage where losses are caused to the insured's own business premises and assets as a result of an insured peril (e.g., storm, flooding, fires, or extreme heat).
- Business interruption (BI) where the business experiences loss of earnings or revenue due to property damage caused by an insured peril.
- Contingent BI that generally covers losses that arise from damage to the property of a supplier, customer, or other business partner.

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Public Liability and Commercial Liability Policies

These policies cover an insured with respect to their liability to third parties. The coverage will typically include damages or compensation payable, as well as legal costs incurred in defending third-party claims. Such claims may arise where the cause of the alleged injury or property damage originates from the insured's own property (e.g., extreme temperatures cause water pipes on the insured's premises to burst and cause water damage to a neighboring property).

Practical Tips to Maximize Coverage

Policyholders should consider the following when making an insurance claim arising from extreme weather or climate-change issues:

Be proactive in notifying insurers

Timing deadlines are likely specified within the policy for the notification of any loss or claim, and failure to comply may result in insurers seeking to restrict or deny coverage. Policyholders should be aware of other notice requirements, such as any obligation to give notice of a loss or an event likely to give rise to a claim. Prompt notification is important to mitigate the risk of coverage denials.

Collate and preserve relevant documents

Insurers may require proof of loss and damage within a specified time period, along with the production of extensive supporting documentation. It is important to take steps early on to ensure that potentially relevant documents are located and preserved.

In the BI context, insurers will often argue that some part of the revenue loss is attributable to other causes, such as poor business decisions or economic downturn—such that historic records often need to be relied upon.

Early assessment of coverage

There are significant benefits in evaluating coverage at an early stage to understand any issues that may impact the way in which the claim is presented. Consultation with experienced coverage lawyers will assist in identifying and analyzing responsive policies, as well as anticipating any coverage issues or exclusions insurers might seek to rely upon.

Defense of third-party claims

Some liability policies provide that the insurer has the right to defend third-party claims, but such a clause does not compel the insured to accept the services of the insurer's chosen lawyers. Insureds should seek to negotiate with insurers to ensure that lawyers with appropriate experience are appointed.

Our global Insurance Recovery and Counseling team regularly assists policyholders in managing and mitigating risk by maximizing insurance recoveries and optimizing insurance arrangements.

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