



2020 Annual Conference
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Through Hail or High Water: The Importance of Using Certified Consulting Meteorologists, Reliable Weather Information and Qualified Experts to Help Resolve Hail and Hurricane Wind vs. Water Claims/Lawsuits

I. Through Hail or High-Water Intro & Description

- a. The weather is getting worse and hailstorms, tornadoes and land falling hurricanes are becoming more common. Along with the multi-Billion-dollar price tags often associated with each of these storms, fraudulent claims or misleading information are leading to claims coverage that is often not warranted. It has never been more important to properly investigate a claim to determine if damage occurred, what caused the damage, and when. Participants will learn about the latest tools, technology and data that insurance carriers and attorneys have available to investigate a claim or lawsuit.

We will discuss the importance of retaining a qualified Certified Consulting Meteorologist (CCM) and the value a CCM brings by conducting a “site-specific” analysis and report that adjusters and engineers can use to support the adjustment and litigation process. We will also address the importance of using qualified experts, staying within their scope of expertise, and how to avoid Daubert challenges which are becoming more and more common.

- b. Our presentation will have four (4) presenters: A Certified Consulting Meteorologist, a property claims manager, and two (2) defense attorneys. This will facilitate different points of views – claims, legal and technology/expert. The presentation will be engaging, conversational and will encourage audience interaction. The presentation will also incorporate an exciting discussion of meteorology, the use of technology while adjusting and/or defending hail and hurricane claims and conversation about recent case law, decisions and successful Daubert challenges.

The target audience is Claims Managers, Adjusters, Attorneys and any other professionals that are involved in weather-related claims and lawsuits. Attendees will learn what tools are available to them, when different experts should be relied upon, the value they bring to a claim or case, and possible implications of not using the right experts to prove a claim or lawsuit. Handouts, sample weather records and other useful information will be distributed to attendees.

II. Hail, Wind, and 'Wind v. Water' Hurricane Claims – Meteorology

Weather data and information is often the key piece of evidence that helps resolve claims and lawsuits. Having the right types of weather data and the right experts are important in achieving these resolutions fairly and expediently. Deciding at what point a Certified Consulting Meteorologist should be involved can be paramount to the success of a claim.

There are many internet sources of weather data and third-party vendor products that provide weather reports and information. Automated Hail Reports ordered online from different vendors often reveal different hail sizes and different hail dates for the same address. Some of these products are based on storm reports far from an incident location, and other times the core methodology is based on reliable and accepted methodology. Discussions will include when these widely relied upon automated reports can be used, what adjusters and attorneys should be aware of when using this information, and common errors that arise when relying on this information.

NOAA's Severe Weather and Storm Reports Database is often relied upon by adjusters and engineers, but research has shown that the locations of these storms reports are often plotted incorrectly or erroneous. Costly examples of using the erroneous storm reports will be discussed, including a recent \$800,000 hail claim where a large hail report from the NOAA database was utilized as the primary evidence in a case, only to be find out that the location was entered incorrectly and plotted 15 miles too far to the west. Having a qualified Certified Consulting Meteorologist conducting an in-depth, site-specific study using Doppler radar revealed that no thunderstorm moved over the incident location on that date and that the hail report was in error.

The value of retaining a qualified meteorologist is not fully appreciated by the insurance and legal industry, or perhaps not even known to exist. We will discuss this growing field and how qualified meteorologists can conduct reliable hail, wind, tornado and hurricane studies for a specific loss location. There are many advanced tools, data and technology that a meteorologist should utilize in these kinds of analysis and we will discuss what Doppler radar products are available and how they can be used in a case. Some of these products include the use of reflectivity, velocity, differential reflectivity, correlation coefficient, specific differential phase, 3-Dimensional volume scans, and cross sections. The significance of differential reflectivity channels, three-body scatter spikes, and tornado debris signatures will also be addressed.

Given the recent increase in landfalling, damaging hurricanes, we will explore the use of Automated Hurricane Reports and what value they provide to adjusters. We will also discuss when a Certified Consulting Meteorologist should get involved, how they can determine the highest wind speeds and/or storm surge at a specific loss location, what directions the highest winds predominantly came from, and how that could play a role in resolving a claim. There are many advanced tools available that meteorologists use to help determine how high storm surge was at a specific home or building, when it began, how quickly it rose, and if the storm surge or damaging winds arrived first. We will identify how this can be determined, what tools and methodology are used, and how this kind of information can prove a case.

Recently, the National Hurricane Center initiated the use of publicly available products called “Potential Tropical Cyclone” advisories. While not yet a debated topic in the insurance industry, there are bound to be significant differences in opinion about whether these constitute a “named storm” or whether a “named storm” deductible applies. We will discuss what these advisories mean and if they mean a weather system is a named storm or not.

III. Tools and Practices Adjusters Use to Determine Damage Causation

In many cases the Adjuster in the course of their investigation/adjustment of the event they will rely on various experts and other resources to assist in verifying the cause of the damages to risk as a result of the event occurrence.

Adjusters will rely on various Weather Forecast tools to get such information as hail strikes, rainfall, snow accumulation, etc. to help with claims during CAT situations and non-CAT situations.

As the claims become more serious in nature or they are as a result of a CAT occurrence there may be the need for the adjuster(s) to engage the services of a Certified Consulting Meteorologist to assist in determining the specific cause of the damages.....were there reported storm surges, wind velocity, hail activity, etc....and to determine what exactly caused the damages to the property

Qualified Engineers may assist in determining the extent of damages as well as Contractors and Roofers and to some extent assist in determining what caused the damages. This can be done in conjunction with the CCM appointed to determine and verify weather conditions.

Assuring that qualified adjusters are appointed to handle these losses is an important practice to undertake especially in CAT situations as they will need the ability to recognize the need for engaging the expert and have the ability to utilize the information in the adjustment of the loss.

a. Legal Considerations and Implications When Selecting Experts

a. The importance of having qualified experts retained on your litigated claim.

Weather conditions -- when, where, and how much -- is an important consideration in most litigated catastrophe claims. Disputes as to when the hail damaged occurred, whether the wind speeds were strong enough to uplift shingles, or whether the rainfall total was enough to overload roof drainage capacity are all common issues in these matters. Whether a covered claim exists under an applicable insurance policy is often largely dependent on the answer to these issues. Building owner insureds or

insurance company personnel typically lack adequate information to offer an informed decision on these issues. Meteorological data available on the internet is often inadequate, unable to be authenticated, or simply wrong. Qualified meteorological experts can be the key to proving relevant meteorological conditions to either establish a meritorious claim or defend against a meritless claim.

b. Keeping experts within area of expertise

Most litigated catastrophe claims involve the use of engineers or other building consultants retained to offer opinions as to the existence or extent of damage. In offering these opinions, these experts also routinely offer opinions on the relevant meteorological conditions that existed on the reported date of loss and weather conditions contributed to the reported claim. This often includes situations where engineers offer opinions as to whether hail was strong enough to cause dents on a metal roof (as opposed to prior storms) or whether wind speeds on the date of loss were strong enough to uplift the roofing membrane. Challenges to the use of engineers or building consultants to offer such meteorological opinions are becoming more common, with courts having recently struck the opinions of engineers offering meteorological opinions outside their area of expertise. Further, reliance on only internet weather resources could leave such opinions subject to attack given uncertainties as to the reliability of such data.

c. Use of Certified Consulting Meteorologist

When the objective is to accurately determine the actual meteorological conditions on a specific date at a location, a Certified Consulting Meteorologist can be the best resource in providing the best available information. A Certified Consulting Meteorologist has access to the best available data, knows how to interpret such data, and can report the data in a manner understandable to the parties and juries. Further, a report prepared by a Certified Consulting Meteorologist can be used by engineers and building consultants in developing their opinions as to when reported damage occurred and the extent of any such damage.

d. Applicable Legal Standards

The federal and state courts have developed standards to evaluate the admissibility of expert testimony when challenged by the opposing party. When such a challenge occurs, the party putting forward the expert must demonstrate that the expert has the training and experience necessary to establish that their methodology and reasoning are scientifically valid as applied to the facts of the litigated disputed claim.

The term comes from a United States Supreme Court case called *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). In this case the

court set forth a set of criteria to be used in articulated a set of criteria for the admissibility of scientific expert testimony. Individual states also have their own standards for expert admissibility, often generally based on the same set of criteria articulated by the United States Supreme Court.

When a party in litigation challenges an opposing expert, what is commonly referred to as a “Daubert Hearing” will be held. The party putting forth the expert will be required to establish why the expert has the education, training, and experience to support their methodology and resulting opinions.

e. Implications of a “Daubert Challenge” if successful

If a “Daubert Challenge” is accepted by the court, an expert’s opinions will be excluded from use at trial. The party who retained the expert will then be required to proceed through trial without any expert opinions as to the meteorological conditions on the reported date of loss. Without information as to severity of the wind speeds or when the hail event occurred, a party may find itself without the information needed to establish a covered cause of loss or prove an applicable exclusion.