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After the Storm: Natural Disasters and Crisis Management for the Insurance Industry

I. Introduction

The recent occurrences of Hurricanes Harvey, Irma, and Maria, and the devastation that followed have highlighted the need for insurers to preemptively manage potential risk and exposure in the event of catastrophic natural disasters. A critical task for the insurance carriers is to guarantee that they have crisis management plans and experienced real-time crisis response protocols in place to mitigate the potential impacts of a natural disaster and return their businesses to normal operations as quickly as possible. If business operations are disrupted, it can cause a litany of problems for insurers such as delays in handling claims, meeting deadlines, as well as impeding their ability to defend against fraudulent claims that inevitably arise after the storm is over. To that end, ensuring the proper measures are taken before, during, and after a hurricane are necessary to mitigate those concerns.

II. Before the storm

a. Create a crisis management plan

Crisis management plans (“CMP”) outline the necessary measures that should occur in the event of a natural disaster like a hurricane. Typical goals of a CMP include protecting the safety of employees, maintain customer service by minimizing interruptions or disruptions of business operations, protect facilities, physical assets and electronic information, and in the case of corporate organizations protecting the brand, image, and reputation of the company. Key employees should be organized into a program committee that will assist with the development, implementation and maintenance of the CMP.

Understanding which audiences the insurance carrier needs to reach during a natural disaster is one of the first steps in developing a CMP because 1) various audiences will want information after the natural disaster and 2) each has its own needs regarding information. These potential audiences may include the following: clients; employees and their families; news media; company management; directors and investors; government officials; and other authorities.¹

Contact information for each audience should be compiled so that it is immediately accessible during and after a natural disaster. Existing information such as customer and

¹ “Crisis Communications Plan” available at <https://www.ready.gov/business/implementation/crisis>

employee contact information may be exportable from existing databases. Insurance carriers should strive to include as much information for each contact as possible and these lists should be updated regularly. Confidential information should be adequately secured and available only to authorized personnel at an emergency operation center or “situation room” to be used by members of the crisis communication team. Hard copies of these lists should also be available for use at an alternative location if the need arises.

Relaying information to clients

Contact with clients should be the top priority of any crisis management plan. As such, the plan should include an action to redirect incoming telephone calls to a call center (if available) or to a voice message indicating that the business is experiencing a temporary interruption. In addition, the CMP should include procedures to insure that clients are properly informed about the status of their claims/inquiries at the time of the natural disaster.

Contact with management and employees

Protocols for when to notify management should be clearly understood and documented in the CMP and relayed to all employees. Similar protocols and procedures should be established for notifying directors, investors, and other important stakeholders as well. The Human Resources department (HR) is normally responsible for the day-to-day communications with employees and should assume a similar role in the event of a natural disaster. As such, HR should coordinate communications with management, supervisors, employees and families.

Contact with the news media

In the event of a natural disaster, there may be periodic requests for information from local or national media. Prioritization of requests for information and developments of press releases and talking points can assist with the need to communicate quickly and effectively. The CMP should designate authorized spokesperson(s) who are permitted to speak with the news media in order to facilitate a unified voice for the insurance carrier. This spokesperson should be prepared in advance to deliver the talking points clearly and effectively in terms that can be easily understood.

Create Pre-scripted messages to reach your audiences

During and after a natural disaster, each audience will seek information from the insurance carrier that is unique to them. As such, the next step in the CMP is to create scripted messages. Creating these message in advance is preferable. Pre-scripted messages can be developed, approved by management team and stored on a remotely accessible server in the event that

The CMP should also aim to ensure that the messages are consistent across all platforms. As such, protocols should be established to ensure that the core of each message is consistent while simultaneously addressing the specific question from each audience.

Consider the impact of inoperable communications systems in the field

Insurance carriers should be cognizant of the impact of communications in the event that adjusters are deployed in an area where communications systems are down or the office is located in an area affected by a natural disaster. As such, carriers should establish procedures and action plans to accommodate this occurrence. For instance, establishing backup communications and make certain that a procedure for restoring communication services is in place. Alternative communication options should also be considered including cellular phones, radios, point-to-point private lines, walkie-talkies, high frequency radio, and satellite communications.

b. Create a Situation room/virtual office/control center

Insurance carriers need to develop systems to assist and manage risk and exposure through the use of tactical, ground zero “situation rooms”. The situation room should consist of established internal divisions responsible for predicting, monitoring, and advising about potentially catastrophic events, including hurricanes.

Through the use of technology, situation rooms can be utilized to provide advanced notice, instructions and warnings to insureds and employees, and through social media platforms. For instance, the situation room can use Twitter or Facebook to provide notifications and warnings to policy holders including information about potential catastrophic weather events that may affect their geographic locations as well as periodic updates as the events are unfolding.

The situation room can also help insurers highlight and pinpoint geographic areas of potential concern and allow the insurers to cross-reference those areas with the locations of their customers. This assists the insurers with evaluating potential risk, but also mobilize, in advance, claim and adjusting teams, and to prepare them for adjusting these potential catastrophic events. These divisions should also be used to communicate with the insureds immediately after significant weather events to ensure their safety, and to initiate the claim process when necessary.²

c. Establish protocols for technology transfers (backing up files information)

In the event of a natural disaster insurers and claim adjusters will need to have access to necessary files to facilitate business continuity after a natural disaster. To that end, extensive protocols for protecting physical files and stored electronic data are essential, especially if the corporate site is in a location affected by the natural disaster.

Offsite backups are essential for hurricane preparedness. Regularly backing up files within the data center is always a good precaution, but will have no effect if the center is damaged by a hurricane. As such, use of an offsite backup center or cloud service is preferable. Cloud technology has made it possible for claims adjusters and necessary personnel to have remote access to claim files and data thereby minimizing interruption of business practices. Of course, all backup systems should be tested regularly to make sure that any data stored in backups is able to be restored and accessed quickly.

III. Facing the storm after the storm

a. Communications with the insured in the affected areas

² White, Aaron R., Di Grande, F., Beach, M., *Responding to Catastrophic Storm Losses*, <http://www.boyleshaughnessy.com/Collateral/Documents/English-US/Responding%20to%20Catastrophic%20Storm%20Losses.pdf>

In the aftermath of a hurricane, insurance carriers and adjusters face a steep task of assessing the damage to their insured’s property as well as beginning the claims handling process. As noted before, the CMP and situation room will both play vital roles in facilitating communications between the carrier and the insured. Critical advice should be given regarding the protection of property v. life and the importance of warning the insureds of the potential consequences of retaining public adjusters and contractors not authorized by their carrier.

An insured’s actions in the immediate aftermath of a natural disaster can have a profound impact on their future claim. As a carrier, providing competent advice to those clients during that time can help the policyholder mitigate future damage to the insured property while also insuring their safety and well-being. Examples include the following:

Safety Advice	Protection of Property/ Claim Processing
<ol style="list-style-type: none"> 1. If you have evacuated, wait until authorities tell you it’s safe before returning home. 2. Be alert for tornadoes. 3. Stay away from flood waters. 4. Use a flashlight. Do not light matches or turn on electrical switches. 5. Do not touch wires or outlets. 6. Check for frayed cords and cracked or broken prongs and plugs. 7. Check for loose boards, hanging plaster. 8. If your home is flooded, check for snakes and other animals that may have entered the property. 	<ol style="list-style-type: none"> 1. Make temporary repairs to prevent further damage but refrain from permanent repairs until you’ve received approval for reimbursement. 2. Keep all receipts. 3. Clean up any flammable or poisonous materials that spilled. 4. Have copies of your insurance policies in a safe waterproof and easy to access location, along with other important documents such as deeds, wills, health records, financial records, per records, identification details, home inventory etc. 5. Save remnants of damaged or destroyed property for your insurance company adjuster, and be sure to meet with them before you sign agreements with contractors or anyone else. 6. Keep a written record of everyone you talk to about your insurance claim, including the date of the conversation and a summary of what was said. 7. Follow your insurance carrier on social media for important storm-related information. Save your insurance carrier’s agent’s phone number for ease of filing future claims.

Policy holders also need to be warned of the dangers of involving public adjusters and unauthorized contractors in their insurance claim. There are numerous issues that may arise when

these parties become involved in the claim. First, policyholders who sign an assignment of benefits form may no longer have the right to receive any insurance payments from their insurer, and such payments may belong to the third-party. Second, some public adjusters are incentivized to inflate an estimate because they are compensated a percentage of the settlement amount which may occur later on. To combat these potential abuses, insurers can 1) warn the policy holder not to sign any documents without obtaining permission from their carrier and 2) include language in the policy that requires the policy holder to report the damage to the insurer within 72 hours of the occurrence.³ Carriers may also consider adopting a “managed repair network” business model. Under this model, policy holders who agree to allow insurers to oversee emergency repairs and select contractors to perform permanent fixes are rewarded with such incentives as higher coverage limits, lower deductibles and discounts on their premiums.⁴

b. Claims handling in the aftermath of a natural disaster

After policy holders experience a natural disaster, claims adjusters are often one of the first individuals that they interact with. Those affected have lost their homes, vehicles or other valuables and need more than an adjuster who is going to treat them like they are another case. Instead, these people who often have lost almost everything need someone who can show them empathy. Claim adjusters can meet this goal while also completing their job effectively by: 1) putting themselves in the policy holders’ shoes; 2) allowing the person to be emotional; 3) actively listening to the insured and remember that there are people and not just another claim. Ultimately, an adjuster’s job is to help their insured, and if their response to their pain helps to ease it a little, he/she has accomplished an important aspect of that job.⁵

Hurricanes provide insurers with a unique opportunity to help policyholders, but keeping field adjusters safe should be a top priority. When the floodwaters start to recede in the aftermath of a hurricane, hundreds if not thousands of insurance adjusters will head directly in to the disaster zone and surrounding areas to begin adjusting billions of dollars in the affected areas. Therefore, adjusters working in the impacted areas should take a number of precautions to stay safe. First, areas affected by these hurricanes will not have operating hotels, stores, banks or other services like electricity or running water. Issues for adjuster to address before traveling to these areas include⁶:

1. How will you travel to the impacted areas?
2. Where will you stay and how far away will it be from the areas you need to reach?
3. Will your cell phone or computers have service in the areas?
4. How will you contact your policy holders?
5. How will curfews affect your ability to travel into some of the areas?
6. Do you need permits to access different areas within the CAT zone?

Given the extent of damage and the numerous dangers that could be encountered, it may be wise for adjusters to work in pairs to provide an added measure of protections. Traveling from site to

³ Ron Hurtibise, *Insurers Beg Customers Not to Sign Over Claims Rights After Hurricane Irma*, (Sep. 10, 2017), <http://www.sun-sentinel.com/news/weather/hurricane/fl-bz-hurricane-irma-aob-warnings-20170909-story.html>

⁴ Id.

⁵ Jeremy Rettig, *Insurance Adjusting after Hurricanes: Remember to Always be Empathetic*, (Oct. 20, 2017) <https://adjustingto6figures.com/insurance-claim-handling-hurricanes/>

⁶ Patricia Harman, *Staying Safe: A Hurricane Harvey Survival Guide for Claim Adjusters*, (Aug. 28, 2017) ,<http://www.propertycasualty360.com/2017/08/28/staying-safe-a-hurricane-harvey-survival-guide-for?page=2>

site will take far longer than anticipated. Therefore, adjusters should allow plenty of travel time between claims and make sure to get the policyholder's cell phone numbers to reach them if delayed or lost. Adjusters should also be careful when entering buildings, examining vehicles, and not knowingly place themselves or colleagues in dangerous positions.

Technology has also provided a way to reduce exposing adjusters to risk through the use of unmanned aerial vehicles commonly known as drones. Drones can be remotely piloted, so there's no need for the adjuster to take any unnecessary risks with his or her personal safety. Drones have the ability to take aerial photos or videos of a property or an area that may be difficult using conventional methods. Drones can also be helpful in surveying damage in widespread storm situations such as hurricanes where they may be flooding, downed trees, and powerlines or when an access to an area may be limited. While the benefits are clear, insurers considering employing drones must meet the rules and regulations under the Federal Aviation Administration (FAA). FAA guidelines require all commercial drones to be registered with the FAA and commercial drone operators need a private pilot certification.⁷ However, as long as insurers adhere to these guidelines, drones can be an invaluable tool in the claims handling process after a natural disaster.

c. Coverage issues that may arise after a natural disaster

1. Insurance Fraud

According to the Coalition Against Insurance Fraud, insurance fraud of all types is an \$80 billion a year business. Furthermore, it is estimated that approximately ten percent of property-casualty insurance losses are connected to insurance fraud. This subset alone results in annual losses of \$32 billion. In the event of a hurricane or other natural disaster those occurrences tend to be more prevalent. For instance, the FBI estimates that after Hurricane Katrina, insurance fraud may have accounted for about \$6 billion of the \$80 billion in government funds earmarked for reconstruction. Some insureds seek to game the system by falsely reporting the cause or extent to their home or business. This occurs when the hurricane legitimately damaged a roof, but the property owner claims damage to siding and windows that either predated the storm or is not real. Homeowners, whose insurance typically does not cover flooding, may characterize damage as being wind-related when it was in fact due to flooding.⁸

There are a number of ways for insurers to combat fraudulent claims after a hurricane. One way is to retain a qualified expert, preferably an engineer, to inspect damages to the property as close in time as possible to the storm. A failure to do so may make it harder to effectively defend denial of claims for pre-existing or unrelated property damage. Another practice is for field adjusters to be thorough in their documentation, to wit: photographing all areas of the property including those that appear to be unaffected by the loss; obtaining recorded statement from as many witnesses as possible and these recordings should be backed up or transcribed to make sure they are available as needed.⁹

2. Notable post-hurricane claims resulting in litigation

⁷ Joel Makhluf, *Drones Are Proving to be a Valuable Tool for Adjusters*, (Mar. 22, 2016) <http://www.propertycasualty360.com/2016/03/22/drones-are-proving-to-be-a-valuable-tool-for-adjus?page=3>

⁸ Gordon K. Walton, *Defending Against Fraudulent Claims After Hurricanes*, (Sep. 27, 2017), <https://www.waltonlawgroupllc.com/fraudulent-claims/2017/09/27/defending-fraudulent-insurance-claims-hurricanes/>

⁹ Id.

The most precedent setting post-hurricane litigation emerged in the aftermath of Hurricanes Katrina and Sandy. Both hurricanes caused significant storm surge resulting in thousands of claims requiring insurers to evaluate wind versus flood coverage issues. Many more anti-concurrent cause or efficient proximate cause claims occurred for which insurers relied on engineers to evaluate each particular claim to determine if the wind or flood claims occurred concurrently and were distinguishable. As a result, significant litigation resulted soon after these storms. The end result was a body of cases that assisted future insurers with understanding the coverage, limitations on coverage, rights, and remedies available to each party under the applicable insurance contracts.¹⁰

In *re Katrina Canal Breaches Litigation*, insurers writing coverage in areas inundated by floods caused in part by the failure of levees denied coverage based on flood exclusions included in the policies. Policy holders argued that their policies' flood exclusions in this context were ambiguous because they did not clearly exclude coverage for an inundation of water induced by negligence. Several of the policies contained the following flood exclusion:

We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or any sequence to the loss. . . **Water Damage**, meaning: . . . Flood, surface water, waves, tidal water, overflow of body of water, or spray from any of these, whether or not driven by wind.

Other policies contained the following exclusion: We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: a) the cause of the excluded event; or b) other causes of the loss; or c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these.

The plaintiffs first contended that because the term "flood" was not defined in the policies, therefore it was ambiguous. They also argued that because the insurers could have more explicitly excluded floods that care caused in part by negligence, their failure to do so in these policies made the flood exclusions ambiguous.

Applying the rules of contact construction the court determined that in light of these definitions the flood exclusions were unambiguous in the context of this case and what occurred here fit squarely within the general prevailing meaning of the term flood. The court considered decisions of courts outside off Louisiana that evaluated whether a flood exclusions similar to the ones in this litigation unambiguously precluded coverage for water damage resulting from failure of a structure, definitions of flood as defined in the American Heritage Dictionary, as well as numerous secondary sources and publications on the matter.¹¹

Another notable case, *Spindler v. Great Northern Insurance Company*, 2016 WL 899266 (E.D.N.Y 2016) occurring after Hurricane Sandy. In *Spindler*, the homeowners filed suit against their insurance company alleging that they breached the terms of the policy by failing to cover a claim they submitted following damage sustained by their property. During the hurricane, the plaintiff's property was damages when two Sea Ray boats, driven by the storm, repeatedly struck their dock, house, and deck. Great Northern relied upon the "surface water" policy exclusion

¹⁰ White, Aaron R., *Supra*

¹¹ *Id.*

which stated: **Surface water.** We do not cover any loss caused by flood, surface water, waves, tidal water, overflow of water from a body of water, or water borne material from any of these, including when any such waters or water borne material from any of these, including when any such waters or water borne materials enters and backs up or discharges from overflows from any sewer or drain located out of or on the exterior of a fully enclosed dwelling.¹²

The *Spindler* trial judge reviewed the magistrates judge’s ruling that the damage caused by the “physical collision” of the boats with the plaintiff’s property was not a contemplated by the surface water exclusion and classified the boat collisions as an “ensuing loss” that was explicitly covered by the policy. The trial judge reviewed the ensuing loss provision, which provided “coverage when, as a result of an excluded peril, a covered peril arises and causes damage.” The court reasoned that the “ensuing loss” is not a loss that occurs as a normal and expected result of water damage. The court therefore ruled that “although flood waters undoubtedly facilitated the incident, two boats breaking free from their mooring and colliding with residential property is not normal and expected damage caused by flood waters.”¹³

¹² *Id.*

¹³ *Id.*