PORT ADMINISTRATION AND LEGAL ISSUES

American Association of Port Authorities
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PROPERTY AND BUSINESS INTERRUPTION CLAIMS FOLLOWING CATASTROPHES

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A Look Back at 2008

• 37 catastrophes (“an event that causes $25 million or more in insured property losses and affects a significant number of policyholders and insurers”).

• $25.2 billion expected in insurance company payments for property losses.
  – 2.7 million personal lines claims (64%)
  – 340,000 commercial lines claims (27%)
  – 876,000 vehicle losses (9%)

Source: ISO’s Property Claims Services Unit (“PCS” ).
What Types of Catastrophes?

- Hurricanes: $13.3 billion.

- Severe weather events (hail, tornadoes, flooding): $10.5 billion.

- Winter storms: $1 billion.

- Tropical storms: $300 million.
Where were the Losses?

• Texas: $10.2 billion.

• Louisiana: $2.2 billion.

• Minnesota: $1.6 billion.

• Ohio: $1.3 billion.

• Georgia: $1.0 billion.
## Was 2008 An Exception?

<table>
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<tr>
<th>YEAR</th>
<th>INSURED LOSS</th>
<th>FREQUENCY</th>
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</thead>
<tbody>
<tr>
<td>1998</td>
<td>$10.1B</td>
<td>37</td>
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<td>1999</td>
<td>$ 8.3B</td>
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<td>2000</td>
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<td>2001</td>
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<td>2004</td>
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<td>2005</td>
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<td>2007</td>
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<tr>
<td>2008</td>
<td>$25.2B</td>
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</tr>
</tbody>
</table>

**TOTAL** $199.0B 293
Have Coverage Issues Changed?

• Yes – and no.

• The old world: appraisal and negotiation.

• The new world:
  – delay/denial
  – litigation
  – then, appraisal and negotiation.
The Root of All Coverage Issues

Differences in perspective about:

– The cause of the losses.

– The policy language.

– The evaluation of damages.
The Policyholder Perspective

• A hurricane is a massive storm that can roar through a region and cause costly property damage and business losses.

• A hurricane is a cohesive whole, with a beginning, a middle and an end.

• Property policies will cover the property damage and business losses caused by the hurricane.
The Insurance Company Perspective

• A hurricane is a series of separate and distinct perils.

• Some of these perils are covered and others are not.

• Policyholders have the burden of quantifying their losses and proving which ones come from which perils.

• These limitations are made clear in simple, understandable policy language.
Proving Causation --

“There is perhaps nothing in the entire field of law which has called forth more disagreement, or upon which the opinions are in such a welter of confusion. Nor, despite the manifold attempts which have been made to clarify the subject, is there yet any agreement as to the proper approach.”

The Key Concept: "Efficient Proximate Cause"

• An insurance company is liable for losses proximately caused by a peril covered by its policy.

• The proximate cause of a loss is a dominant, effective or operative cause.

• It is not necessarily the first, last or only cause.
Losses are covered when wind is the “efficient proximate cause,” even if other perils contributed to the loss.

- **Louisiana Supreme Court**

- **Mississippi Supreme Court**
  Glens Falls Ins. Co. of Glens Falls, N.Y. v. Linwood Elevator, 130 So. 2d 262, 270 (Miss. 1961)

- **Alabama Supreme Court**
  Western Assur. Co. v. Hann, 78 So. 232, 236 (Ala. 1917)
It All Comes Down to the Facts


• Coverage found because of testimony of neighbor who drove near house shortly before it disappeared.  U.S. Fid. & Guar. Co. v. Morgan, 399 S.W.2d 537 (Tex. 1966).
"In accordance with well-established principles of Mississippi law, it is the question of causation that will determine whether any particular loss is covered by the policy or not."

The “Anti-Concurrent Causation” Clause

“We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.”

Insurance Services Office Causes of Loss-Special Form (CP 10 30 04 02), accompanying Building and Personal Property Coverage Form (CP 00 10 04 02).
Consider the Implications . . .

If enforced, this clause “would mean that an insured whose dwelling lost its roof in high winds and at the same time suffered an incursion of even an inch of water could recover nothing under his Nationwide policy. . . I do not believe this is a reasonable interpretation of the policy.”

Are These Clauses Enforceable?


• Yes, in Utah.  
“Proving” Losses

- Business income claims: what would our revenues have been had this loss never occurred?
- My forensic accountant expert witness – or yours?
- Whose assumptions and methodology sounds better?
- If you knock out my expert, do you avoid coverage entirely – or do we simply start again?
Related Issues

• “Period of Restoration.”

• “Civil Authority” clauses.

• “Valued Property” statutes.
“Period of Restoration”

• Identifies the hypothetical time period needed to repair or replace damaged property at the original location.

• Watch the policy language: ISO’s standard-form since 1995 limits this period to the lesser of the time above or the time at which operations resume at a new location (even if less desirable).
“Civil Authority” Coverage

• This is a coverage extension for loss that results from steps taken by government authorities in response to a catastrophe.

• I.e., orders not to enter particular buildings or other locations.

• Avoid words of absolute limitation; look for policies that provide coverage for access that is “impaired,” rather than “prohibited.”
Louisiana Valued Property Law

“[I]f the insurer places a valuation upon the covered property and uses such valuation for purposes of determining the premium charge to be made under the policy, in the case of total loss the insurer shall compute and indemnify or compensate any covered loss . . . without deduction or offset . . .”

LA. REV. STAT. ANN. § 22:695(A)
Florida Valued Policy Law:

- Florida had a Valued Policy Law for 106 years.


- But state legislature changed the law shortly after that decision.
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