



Hurricane Insurance Claims Update

Live Webcast

Thursday, June 29, 2006, 2 PM ET

Please dial:

888.217.4028

Participant Passcode:

52553531

NAVIGANT
CONSULTING

Morgan Lewis
COUNSELORS AT LAW





Hurricane Insurance Claims Update

Speakers/Panelists:

Morgan, Lewis & Bockius LLP

David M. Halbreich (Los Angeles)

John D. Shugrue (Chicago)

Richard F. McMenamain (Philadelphia)

Thomas A. Marrinson (Chicago)

Navigant Consulting, Inc.

Bradley D. Murlick (Chicago)

Stan Johnson (Atlanta)

Introduction & Overview

- Types of Potentially Available Insurance Coverage for Hurricanes
- Pre-Loss Preparedness and Post-Loss Response
- Key Claims and Insurance Coverage Issues
 - Key Claims Lessons: Preparation, Submission, Handling, Negotiation and Valuation
 - Key Insurance Coverage Issues
- Question and Answer Session

The 2005 Hurricane Season

- Hurricane Katrina
 - The most costly property insurance event ever
 - Over \$50 billion in insured losses of total economic losses totaling over \$100 billion
 - 400,000 jobs lost
- Hurricane Rita
 - Over \$5 billion in insured losses
- Hurricane Wilma
 - Over \$10 billion in insured losses

Categories of Insurance Coverage Potentially Available for Hurricanes

- Physical Damage/Other Costs
 - Buildings/Real Property
 - Personal Property (Insured and Its Officers and Employees)
 - Property of Others in Insured's Custody
 - Accounts Receivable
 - Electronic Data/Programs/Software
 - Debris Removal
 - Decontamination Costs/Pollutant Removal
 - Demolition/Construction Costs
 - Valuable Papers/Records
 - Professional Fees (excluding attorneys', public adjusters')

Categories of Insurance Coverage Potentially Available for Hurricanes (cont'd)

- Time Element
 - Business Interruption (BI)
 - Contingent BI
 - Extra Expense
 - Leasehold Interest
 - Civil Authority
 - Ingress/Egress
 - Service Interruption
 - Electronic Data Processing and Computer Systems
- Third-Party Liability
 - General Liability
 - Environmental Impairment Liability
 - Directors and Officers Liability

Pre-Loss Preparedness and Post-Loss Response

- Policies are not uniform – understand your coverage and limits
- Determine ahead of time policy requirements for submission of your claims – timing, format and documentation
- Know in advance the format and timing requirements for notice and proof of loss
- Immediately provide notice of claim
- Frame your claim within scope of coverage and avoid exclusions

Pre-Loss Preparedness and Post-Loss Response (cont'd)

- Take proactive role in claim
- Assemble the claim team in advance
- Establish expectations and talk to peers
- Make critical decisions immediately
- Immediately establish processes for gathering information and documenting your claim
- Be aware of key conditions: loss mitigation, sue & labor

Key Insurance Coverage & Claims Issues

- Physical Damage Coverage
 - Repair vs. Replacement
 - Rebuilding at another location
 - “Reasonableness” of expenditures in post-disaster environment
 - Valuation and calculation issues
 - The “extra expense”/loss mitigation approach
 - “Valued Policy” claims
 - Deductible application issues, including deductibles for special endorsements

Key Insurance Coverage & Claims Issues (cont'd)

- Covered Cause vs. Excluded Cause: Concurrent Causation
 - The “Flood vs. Windstorm” Debate
 - Homeowners coverage litigation
 - Commercial coverage – “flood” as covered cause, but subject to sublimits
 - The possible role of non-insurance litigation in the causation debate

Key Insurance Coverage & Claims Issues (cont'd)

- **Business Interruption Claims**
 - Period of Restoration/Indemnity
 - Actual vs. hypothetical
 - Leased property (malls, office towers, etc.)
 - Extended period of indemnity
 - Measuring loss in post-disaster setting
 - Actual loss sustained and gains in other markets – what impact?
 - “Loss of Market” exclusions
 - Measurement Considerations
 - Ordinary Payroll

Key Insurance Coverage & Claims Issues (cont'd)

- Application in Special Endorsements (CBI, Civil Authority, etc.)
 - Point of measurement (local/regional, upstream/downstream)
 - Scope of locations included
- Civil Authority
 - What orders trigger coverage?
 - What impact must the orders have to trigger coverage?

Key Insurance Coverage & Claims Issues (cont'd)

- **Contingent Business Interruption Claims**
 - Defining Contingent/Dependent locations
 - Direct vs. Indirect
 - How far does the chain extend – primary/secondary
 - Deductible application issues

Key Insurance Coverage & Claims Issues (cont'd)

- Pre-loss preparations
- Accounts Receivable write-offs
- Humanitarian efforts/Employee relief
- Mold
- Rioting/looting
- Liability exposures (e.g. breached levees, environmental discharge)

Key Insurance Coverage & Claims Issues (cont'd)

- Other issues unique to Katrina and/or Rita
 - Widespread damage/locations
 - Multiple perils
 - Heavy contingent losses
 - Population shift
 - Significant increase in labor and other costs

Key Insurance Coverage & Claims Issues (cont'd)

- Policy Cancellation in Wake of Disaster
- Policy Non-Renewal in Wake of Disaster
- Underwriting Issues/Outlook



QUESTION & ANSWER SESSION

Contacts

Morgan Lewis Attorneys:

David M. Halbreich (Los Angeles)
dhalbreich@morganlewis.com
(213) 612-7345

John D. Shugrue (Chicago)
jshugrue@morganlewis.com
(312) 324-2535

Navigant Professionals:

Bradley D. Murlick
(312) 583-6817
bmurlick@navigantconsulting.com

Richard F. McMenamin (Philadelphia)
rmcmenamin@morganlewis.com
(215) 963-5596

Thomas A. Marrinson (Chicago)
tmarrinson@morganlewis.com
(312) 324-1120

Stan Johnson
(404) 602-5036
sdjohnson@navigantconsulting.com



Appendix A: Hurricane-Related Regulations and Legislation

Timing and Deadlines in Louisiana

- Louisiana Dep't Insurance Advisory Letter 06-04
 - Gives policyholders option of requesting a 24-month prescription period to file suit on a claim due to Hurricanes Katrina and/or Rita
- La. SB 740
 - Passed one chamber
 - Would extend by one year the time that insured has to file a claim resulting from Hurricanes Katrina and Rita
- La. SB 620
 - Increases penalties for insurers that fail to timely pay claims

Timing and Deadlines in Alabama

- Alabama moratorium on all policy conditions and deadlines expired on October 29, 2005
 - Applied to payment of premiums
 - Notice and proofs of claim

Timing and Deadlines in Mississippi

- Mississippi, Bulletin No.2005-11:
 - With respect to personal and commercial property insurance policies covering structures in Mississippi damaged as a result of Hurricane Katrina, all insurance companies are directed to grant an extension of any and all time limits for the submission of any “Notice of Claim” and or “Proof of Loss” information by the insured to the insurance company.
- Mississippi, Bulletin No.2006-3:
 - Suspends the 180 day deadline for making repairs or providing notification of intent to make a claim for additional liability and applies to all personal and commercial property replacement insurance policies covering structures damage as a result of Hurricane Katrina and that contain either of the 180-day provisions.

Policy Cancellation and Non-renewal: Louisiana

- Louisiana, Emergency Rule 23:
 - Suspends the right of any insurer to cancel or non-renew property insurance covering a dwelling located in Louisiana that sustained damage as a result of Hurricanes Katrina and/or Rita until 60 days after the substantial completion of the repair or reconstruction of the property.

Policy Cancellation and Non-renewal: Mississippi

- Mississippi moratorium on cancellation and non-renewal, Bulletin 2005-12, expired in November 2005.
- Mississippi Dep't of Insurance, Bulletin 2005-13
 - Applies to all insurance companies and eligible non-admitted insurers/surplus lines insurers doing business in Mississippi
 - “No insurance company shall cancel or non-renew a personal or commercial residential property insurance policy covering a dwelling or residential property located in this state which has been damaged as a result of Hurricane Katrina, for a period of sixty (60) days after the dwelling or residential property has been repaired.”
 - Existing coverage must be extended and premium prorated
 - “Repaired” when repairs are substantially completed and structure repaired to extent insurable by another authorized insurer

Policy Cancellation and Non-renewal: Texas

- Texas, Bulletin No. B-0053-05, expired December 2005:
 - Prohibits insurers from re-rating, canceling, non-renewing, or refusing property or casualty insurance due solely to an individual's status as a victim or evacuee of Hurricane Rita

Policy Cancellation and Non-renewal: Florida

- Florida, Emergency Orders:
 - 82315-05-EO: Prohibits cancellation or non-renewal of residential property insurance covering property damaged by Hurricane Dennis
 - 83768-05-EO: Prohibits insurers from cancelling or non-renewing personal or commercial residential insurance policies covering dwellings or residential properties in 20 counties damaged by Hurricane Wilma for a period of 90 days after the dwelling has been repaired
 - 83836-05-EO: Prohibits insurers from canceling or non-renewing policies held by insureds in 20 counties damaged by Hurricane Wilma



Appendix B: Hurricane-Related Litigation

Hurricane-Related Insurance Litigation

- Northrop Grumman Corp. v. FM Global Ins. Co., (U.S. District, Cal., Western Division)
 - Shipbuilder estimates hurricane damage at \$1.26 billion
 - Business interruption losses estimated to be in excess of \$500 million for 2005 and additional time element losses in 2006
 - FM provided excess limits of \$19,84 billion above \$500 million per occurrence
 - Primary policies include “named windstorm” clause covering wind and flood damages
 - Dispute over whether excess policy includes the named windstorm clause covering wind and flood

Hurricane-Related Insurance Litigation

- Babineaux v. Liberty Mutual Fire Ins. Co., No. 05-6888 (E.D. La.) (filed as class action)
- Huntley v. Allstate Indemnity Company, No. 05-6887 (E.D. La.) (filed as class action)
- Forty-plus cases pending in the Eastern District of La., some class actions, seek policy limits under Louisiana statute requiring payment of full limits under fire policy when there is a total loss or a constructive loss.
- A number of these legal issues are scheduled to be argued this summer in Sampia v. Massachusetts Bay Ins. Co., No 06-0559 (E.D. La.)

Hurricane-Related Insurance Litigation (cont'd)

- Suit to enjoin a violation of Louisiana Emergency Rule 23 against cancellation and non-renewal:
 - B-G & G III Investors, LLC v. Hermitage Insurance Co., No. 540007 (19th JDC, Parish of Baton Rouge, La.) (filed 1/24/2006)
 - Plaintiff claims that the defendant-insurer had canceled its major commercial policy based on “loss experience,” when the plaintiff’s only loss was hurricane related.
 - Court issued a temporary restraining order to enjoin cancellation of the policy.

Hurricane-Related Insurance Litigation (cont'd)

- Mississippi Attorney General v. Insurers, MS, Chancery Court, 9/15/05
 - Class action alleges flood exclusion is void because MS contract law does not allow exclusions that interfere with proximate cause
 - Alleges flood exclusions are ambiguous
 - Lost injunction to prevent insurers from drawing causal distinction between wind and water

Hurricane-Related Insurance Litigation (cont'd)

- Scruggs v. Nationwide Mutual Ins. Co., MS, Chancery Court, 10/4/05
 - Seeks coverage for damage to residences
 - Alleges storm surge was proximate cause of loss
 - Alleges unjust enrichment against insurer and broker
 - Seeks reformation based on misrepresentation
 - Alleges agent represented policy provided full coverage for loss and that flood coverage was unnecessary
 - Alleges fraud against insurer and agent

Hurricane-Related Insurance Litigation (cont'd)

- Berthelot, et al. v. Boh Bros. Constr. Co., No. 05-4182 (E.D. La.)
 - Lead case, Chehardy, class action against 17 insurers and La. Commissioner of Insurance with class consisting of everyone in parishes of Orleans, Jefferson and St. Bernard who suffered hurricane damage
 - Consolidated with 18 cases pending before Judge Duval
 - Seeks to have court order Insurance Commissioner to require insurers not to enforce flood exclusions and for coverage under homeowners' policies to include claims against Orleans Levee District and its insurer for negligence in design, construction and maintenance of levees
 - Alleges that loss was caused by levee break and that there was no flood
 - Allegations against gov't officials for failure to respond
 - Dispositive motions scheduled for hearing 7/12/06

Hurricane-Related Insurance Litigation (cont'd)

- Buente v. Allstate Prop. & Cas. Ins. Co., No. 1:05CV712 (S.D. Miss.)
 - Homeowner's suit seeking coverage for flood damage
 - On 4/11/06, Judge Senter denied plaintiff's motion for partial summary judgment, finding flooding was from tidal water, which was excluded by Allstate's water damage exclusion
- Many suits against insurance agents alleging failure to properly advise clients regarding the purchase of flood insurance

Hurricane-Related Insurance Litigation (cont'd)

- Business Interruption Lawsuit
 - Lewis, Kullman, Sterbcow & Abramson v. Valley Forge Ins. Co., E.D. La., 1/5/06
 - New Orleans law firm forced to relocate to Baton Rouge due to damage to its office
 - Seeks \$502,631 in business interruption loss

Hurricane-Related Non-Insurance Litigation

- Turner v. Murphy Oil, No. 05-4206 (E.D. La.) Blanchard v. Sundown Energy, No. 05-4198 (E.D. La.)
 - Suits against energy industry over ruptured oil tanks and pipelines that have polluted Louisiana neighborhoods
- Danos v. Bass Enterprises Prod. Co., No. 05-4212 (E.D. La.)
 - Putative class of LA's fishermen over damages to estuaries, bays and oyster beds caused by oil spills
- Barasich v. Columbia Gulf Transmission Co., No. 05-4162 (E.D. La.)
 - Suit against oil and gas industry for role in disappearance of wetlands that protected LA from storm surges

Hurricane-Related Non-Insurance Litigation (cont'd)

- Nicholson v. U.S.A. and the U.S. Army Corps of Engrs., No. 05-1259 (U.S. Ct. of Claims)
 - Suit in La. against Army Corps of Engineers for negligent construction of Mississippi River Gulf Outlet
- Chicago Prop. Interests, LLC v. Aaron Broussard and Jefferson Parish, No. 624-459 (24th JDC, Parish of Jefferson, La.)
 - Putative class action alleging Jefferson Parish, through its president, negligently failed to deploy personnel to operate parish pumps during Hurricane Katrina, which caused flooding and property damage