

Whose Expert's Card is in Your Wallet?

by Damon Faunce and Marvin Milton

Hurricane Katrina did more than just unleash torrents of rain, floods and horrendous winds that caused extraordinary damage. As in all widespread disasters, it also released a plethora of insurance consultants, experts and adjusters bent on servicing the claims that arose from the extreme weather conditions. The pros, the semi-pros and the rank amateurs who sought to assist either policyholders or insurance companies in the adjustment of the claims can be basically grouped into three categories:

1. The technical support people with a special skill in assessing property damages such as engineers, architects and rehabilitation and emergency mitigation companies;
2. The number crunchers who track the expenditures and formulate the cash flows and the forecasts of revenues and expenses that are necessary to formulate the business income and extra expense claims; and
3. The adjusters that coordinate both the reconstruction specialists and the number crunchers and shape all the figures into a comprehensive insurance claim.

There is no shortage of the technical support people as evidenced by the number of engineering and building consultants that have formed relatively large scale firms to handle just such disaster scenarios. Most of them market their companies as loss consultants; however, most have very little claims handling experience. The spin offs from Arthur Andersen alone produce a decent size universe of number crunchers some working only for insurance companies and some working predominantly for policyholders.

With property insurance coverage more restrictive and complex than ever, policyholders have a more difficult burden to sustain a claim than in prior disasters. Most corporations and property developers have had their insurance placed by their brokers with very little understanding of the claims process and exactly how their policies will respond in the event of a catastrophe. If possible, risk managers, legal counsel, or financial officers should have their property portfolio reviewed and analyzed by a Loss Advisor, prior to such disasters, which would ensure that the proper coverage is in place. This is rarely a priority, and most policyholders will

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rely on their insurance broker for their expertise. In many cases, one disaster leads to the next when the corporation and property owner rely solely on the direction of those whose interests are directly affected by the amount paid on a claim.

The policyholder is at a greater risk, when an expert who is unfamiliar with the insurance laws, policy language, and claim adjustment process, is presenting claims for recovery to the insurance company. Is it the responsibility of the accounting firm — who is busy totaling lost sales, and inventory damaged — to bring to the insurance company's attention favorable policy coverages? Is it the emergency contractor's responsibility to offer global options for recovery and settlement prior to reconstruction? For these reasons, policyholders retain their own Loss Advisor to be their advocate during the claims process and allow this Loss Advisor to deal directly with the insurance company who has retained its own adjuster.

Of all the people brought to bear on the catastrophe, perhaps, the Loss Advisors are the most important. They are in the best position to see that nothing falls through the cracks so that policyholders can maximize their insurance coverage. They can act as the point person representing the policyholder in dealing with their counterpart who represents the insurance company. Unfortunately, the insurance company adjuster will never have enough dollar authority to resolve the claim but must answer to someone whom you cannot touch, see or hear. It is this lack of authority that can be most detrimental to how the claim is presented.

From the very first meeting, a picture is being painted for the man behind closed doors at the insurance company. Who is representing your view of how the claim should be handled? Who is projecting a reserve estimate of damages for your side? Without an experienced advocate Loss Advisor representing the policyholder, the policyholder is forfeiting the right to have its side of the story told to the people who actually make the decision on the resolution of the claim.

The qualifications for a Loss Advisor representing a policyholder are not meager. One must have an intimate knowledge of insurance policy provisions, the case law undergirding the interpretation of those policy provisions — or, at least, the more important ones — a familiarity with the usual rules and procedures for processing large scale property and business income claims, and a disposition to be assertive in advocating your client's position on contentious issues. The appropriate strategies should be developed and all members of the team should funnel reports and information through one source. Of course, it goes without saying, that the interests of the policyholder-client are paramount and there should be undivided loyalty to the policyholder-client.

So, it is puzzling that some policyholders turn to their brokers to represent them in coordinating the efforts of the property specialists and the number crunchers in processing their insurance claims. The New York Attorney General may have stopped well short in ending his inquiry into the symbiotic relationship between brokers and insurers in just the selling of the policy. All the big brokerage houses

have personnel devoted to processing their clients' claims – for a fee – yet those very same brokerage houses are in a conflict of interest with their clients as to the ultimate size of the claim. Even if the broker has eliminated the contingency due from the insurer for a favorable loss ratio, there is still the issue of what happens if the risk has been negligently or inadequately covered. Who points the finger?

As a matter of fact, the most significant court decision involving contingent business-income coverage arose precisely because the broker had inadequately covered the policyholder for that risk. See *Archer Daniels Midland Company v. AON Risk Services, Inc.*, 356 F.3d 850 (8th Cir. 2004).

It seems that the most appropriate resolution regarding the issues of undivided loyalty to the policyholder-client and a competent marriage of the insurance policy provisions to the facts on the ground would be to utilize a Loss Advisor similar to those constituting Anderson Kill Loss Advisors. These Loss Advisor professionals bring to the table experience in processing large-scale property and business income claims, knowledge of the procedures and rules governing the disposition of those claims. In addition, they oftentimes have a working relationship with the insurance company personnel involved in the claim and targeted responses to persistent insurance company boilerplate objections. The Loss Advisor deals with the adjustment of claims and has but one goal in mind; to aid their policyholders-clients and their advisors throughout the entire claims adjustment process with the ultimate goal of achieving the fairest and most equitable settlement in the least amount of time.

A further advantage is the fact that the Anderson Kill Loss Advisors are supported by the legal resources of Anderson Kill & Olick, P.C., thus empowering a significant pairing of skills to advance the case for the policyholder. In fact, this merely replicates the profile of professionals that

are always in place for the insurance companies.

When disaster strikes, it is advisable to have an Anderson Kill Loss Advisor's card in your wallet. ■

The information appearing in this newsletter does not constitute legal advice or opinion. Such advice and opinion are provided by the firm only upon engagement with respect to specific factual situations.

MARK YOUR CALENDAR

Anderson Kill & Olick, P.C. Presents

Katrina/Rita/Wilma Damages:

RECOUPING YOUR LOSSES WITH AN AGGRESSIVE INSURANCE RECOVERY PROGRAM

DATE	March 30, 2006
TIME	9:00 am - 1:30 pm
LOCATION	The Windsor Court Hotel 300 Gravier Street New Orleans, LA 70130

KEY NOTE ADDRESS:

J. Robert Hunter, Director of Insurance
Consumer Federation of America

TOPICS TO BE DISCUSSED INCLUDE:

- » Wind, Water and Proximate Causation
- » Property Losses
- » Business Income/Contingent Business Income/Other Time Element Claims
- » Valuation of Hurricane Losses

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This program is Louisiana CLE pending.

For further information, or to register, please visit www.andersonkill.com or contact Andrea McLean at (212) 278-1400.

To learn more about the Loss Advisors Network Visit: www.andersonkill-la.com | Members List:

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