

INSURANCE ISSUES FOR WORLD TRADE CENTER DISASTER

Below are several key issues that policyholders should consider under their property insurance policies as they cope with the aftermath of the World Trade Center Terrorist Attack.

1. Identification of all Applicable Property Insurance Policies

- Policyholders should ensure that they have located all applicable primary, excess, local and global property insurance policies, inland marine policies and business-owners policies that may apply to their claims for property damage or business interruption (note that a number of different insurance companies may either have sold or “subscribed” to any one policyholder’s property insurance program).
- The loss of life and the utter destruction of offices, records and files may make more difficult the task of identifying all applicable insurance assets; nevertheless, there are ways in which policyholders can trace and secure this valuable information.

2. Be Mindful of Time-Sensitive Provisions in Policies

- Insurance policy provisions dealing with (1) notice, (2) proofs of loss, (3) suit limitations; and (4) the time within which a policyholder is to repair or replace property, may have significant implications for collecting on insurance policies.
- New York law on “late notice” and “late proofs of loss” is extremely harsh and unforgiving to policyholders in many instances. As such, policyholders are well-advised to treat these provisions seriously and protect and preserve their rights.

3. Secure Tolling Agreements with Your Insurance Company

- Property and business interruption losses of this magnitude may well result in claims processes that take insurance companies and policyholders months if not years to resolve.
- Oftentimes, policyholders can deal effectively with time-sensitive provisions in their insurance policies by executing written tolling agreements with their insurance companies to extend the time by which a policyholder must take some action called for under the insurance policy.

4. Insurance Program Renewal Concerns

- Sadly, not only have a large number of policyholders lost employees, offices and critical records, but insurance brokers and insurance companies were significantly affected by this disaster.
- This catastrophe may cause insurance programs to lapse and create uninsured gaps in a policyholder’s insurance coverage.
- While insurance brokers have sought automatic renewals from insurance companies for policyholder insurance programs in light of this disaster, policyholders must still

remain vigilant to see that these requests are honored and to make alternative arrangements when renewals are rejected by insurance companies.

5. Emergency Repairs and Preservation of Property

- While currently the majority of emergency efforts are being coordinated and performed by governmental agencies and officials, policyholders should be mindful that their insurance policies will typically call upon them to take certain proactive measures to mitigate losses and avert further or additional losses.
- Many property insurance policies contain a variety of different provisions which may cover in full all costs or expenses incurred by a policyholder in protecting and preserving insured property.

6. Retain Engineers and Consultants if there is Any Risk to the Structural Integrity of a Property Owned or Managed by the Policyholder

7. Document all Loss Items and Emergency Expenses

- Insurance companies often question, reject and contest loss items submitted by policyholders for reimbursement. Keeping complete and accurate records of loss items is extremely helpful to ensure that policyholders are inevitably reimbursed in full for the amount of their insurance claims.

8. War Risk Exclusion

- Currently, insurance industry officials are stating that no insurance policy exclusions exist for losses caused by terrorist acts. Nevertheless, most insurance policies are laden with various exclusions and policyholders must remain vigilant to guard against insurance company attempts to apply improperly exclusions and conditions to reduce or deny insurance coverage.

9. Consider Insurance Coverage under Other Insurance Policies

- The impact of this disaster will be far-reaching. Accordingly, consider what notice must be given under liability insurance policies in the event of claims by third parties. Also, determine if a business or entity is an "additional insured" under the insurance policies of other parties.
- Also consider addressing any other insurance coverage issues under life insurance, workers compensation and any other form of insurance that may apply to claims surrounding this catastrophe.

The carnage from this disaster is unprecedented. Policyholders should be aware that the processing of a claim for total and complete destruction of insured property and corresponding business interruption is infinitely more difficult than if the insurance company can "see, touch and feel" the property damage. As such, policyholders should be well prepared to navigate the claims process in an effort to secure their insurance coverage in full.