

Insurance Buyers' News



Springfield

PO Box 4207, Springfield, MO 65808
Phone: 800-422-5275
417-887-3550 • Fax: 417-887-3252

Rolla

PO Box 1258, Rolla, MO 65402-1258
Phone: 800-364-2212
573-364-8888 • Fax: 573-341-2257

West Plains

PO Box 964, West Plains, MO 65775
Phone: 800-400-3896
417-256-6162 • Fax: 417-256-6165



Liability

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Five Lessons from Recent Hurricane Losses

Wind and water aren't the only financial dangers from a hurricane

Hurricane Deductible Warning

Business owners with property insurance policies are accustomed to fixed-dollar deductibles. However, some people don't realize that because of the catastrophic nature of hurricanes, property losses in states prone to hurricanes are subject to percentage deductibles. The insurance industry started using percentage deductibles (applied as a percentage of the insured value) after Hurricane Katrina in 2005 to help control their catastrophe exposure, but also to keep premiums down. For example, a two percent hurricane deductible



This Just In

Losses from commercial auto insurance keep trending higher. In 2016, the combined ratio for commercial auto insurance (earned premium divided by losses and expenses) was 110.4 percent — a 15-year high and a 20 percent increase from 92.1 percent in 2005.

In an article by *Business Insurance*, Paul Horgan, head of commercial Insurance at Zurich North America, is quoted saying, "We see the industry right now as 20%-25% underpriced in that space."

According to a paper published by GenRe, some of the reasons behind the worsening experience are:

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on a building insured for \$500,000 would be \$20,000. Until this year, hurricane deductibles have not been triggered on a very large scale.

If you think you might need more hurricane coverage, please contact us.

Beware of Buying Flood Damaged Cars

Recent hurricanes have caused flooding that completely or partially submerged more than a million vehicles worth over \$5 billion. If the vehicle is no longer operable, the insurer will pay the owner its value and resell it as “salvage” at auction. Unscrupulous auto dealers will sometimes purchase these vehicles, attempt to disguise the damage and resell them without disclosing the damage on the title. This practice, called “title washing,” is illegal but common. The National Insurance Crime Bureau offers a free service called VINCheck that car buyers can use to check a vehicle’s history, including whether it’s ever been declared “salvage.” <http://tinyurl.com/25swr2w>

Charitable Solicitation Rip-off Tip-off

Fraudsters often take to the phones or the internet after a major catastrophe to prey upon people’s sympathies. Some of the tip-offs that these folks are not legit include:

- ✱ Asking for cash or requesting money to be wired
- ✱ Calling to offer thanks for a donation pledge you don’t remember making
- ✱ Using pressure tactics to elicit a donation

- ✱ Not being able to prove the donation will be tax-exempt

To be certain your donation is going where you intend, contribute to well-known groups such as the American Red Cross or the Salvation Army. Ask organizations you’re unfamiliar with to send the request by mail so you can have a chance to research them online. You might also want to ask how much of your dollars will actually go to help victims. And don’t give out your credit card or bank authorization numbers unless you’re absolutely sure of the organization’s legitimacy.

Don’t Let a “Bad Apple” Cost You 15% of Your Settlement

When a catastrophe occurs, most insurers are accustomed to dealing with it and will quickly deploy teams of staff and independent adjusters to the scene. But sometimes public adjusters, who are licensed in 44 states, also show up. They will promise to get policyholders a better, quicker settlement, restore business operations faster, and probably suggest that taking an adversarial role with the insurance company will get the policyholder a better outcome. They will also charge up to 15 percent of the settlement for their services.

“Some public adjusters may try to exploit the confusing flood aftermath with insurance schemes,” said Jim Quiggle, director of communications for the Coalition Against Insurance Fraud (The Coalition), to *Property-Casualty360*. “Most are honest, but the bad apples could be a big problem for insurers

This Just In

- ✱ Younger, less experienced truck drivers on the road because of driver shortages.
- ✱ More miles driven due to the improved economy and lower gas prices.
- ✱ Attorneys taking advantage of greater availability of safety data on motor carriers to target and win commercial auto cases.
- ✱ Trend to shift responsibility from independents to employers and “win large ‘nuclear verdicts’ of over \$10 million.”
- ✱ Greater number of traumatic brain injury (TBI) cases leading to higher court awards.

Commercial auto rates are going up, though brokers and insurers are trying to help clients keep increases under control with better risk management and loss control. Please contact us for more information about your commercial auto risks.

and desperate [business owners].”

Policyholders should also be cautious about contractors recommended by public adjusters. “Public adjusters might charge an illegally large fee and then disappear without managing the claim,” warns Quiggle, who also says that sometimes kickbacks are paid by contractors to “bad apple” public adjusters.

What does your business property policy cover? And what does it omit? Contact us for a policy review.

Wind or Water Matters

Catastrophes like hurricanes often result in losses from more than one peril. For example, there may be property damage from both wind and water. Which peril caused the loss? In what order? If there are two policies involved, one for wind damage and one for flood, how should the loss be apportioned?

These determinations often depend on which doctrine of causation applies. Some jurisdictions use the “efficient proximate cause doctrine” while others subscribe to the “concurrent causation doctrine”.

The *efficient proximate cause doctrine* says that when there is more than one peril involved, the peril that set the other perils in motion — the “efficient cause” — is the one that caused the loss.

The other, more liberal, approach is the *concurrent causation doctrine*. It says that when more than one peril is involved, the loss will be paid as long as one of the covered perils is insured.

In *American Home Assurance Co. v. Sebo* (2013), the Florida Supreme Court recently adopted the *doctrine of concurrent causation* to rule in favor of policyholders seeking coverage for claims where there were multiple concurrent losses with at least one of the losses covered. That decision will surely impact claims filed in the wake of Hurricane Irma. ■

Was Vegas Shooting Foreseeable?

If a particular type of crime regularly occurs on certain business premises, could other businesses in that industry be held liable if they fail to take preventative measures against similar instances in the future?

The mass shooting at MGM Resorts' Mandalay Bay Resort and Casino in Las Vegas on October 1 resulted in the deaths of 58 people and injuries to more than 500 others.

According to experts interviewed by *Business Insider*, it is very likely that victims of the shooting and their families will file lawsuits against MGM Resorts and Mandalay Bay for medical expenses, disability, wrongful death — especially by children of parents who died — and possibly punitive damages, among other causes of action.

Warning Signs

Dick Hudak, a former FBI agent and security director at Sheraton and managing partner of Resort Security Consulting, told *Business Insider* that the shooter, Stephen Paddock, gave the hotel “a clue that something bad was going to happen” when he placed a “do not disturb” sign on his door for three days, preventing housekeeping staff members from entering the room. Hotel



employees should have been very suspicious, he said.

Also, there is the question of how Paddock could have stockpiled 23 guns in his room unnoticed by the doorman and other staff. Paddock also placed cameras outside his room. Why did the security staff fail to report this?

Adam Kutner, a Las Vegas attorney specializing in personal injury, told the Las Vegas Review-Journal, that “casinos have an extensive array of surveillance cameras both inside and outside their properties. They also keep detailed information about the habits of their top clients.

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The hotel should have been able to detect whether Paddock was acting unusually.”

Still, the circumstances, which were red flags in retrospect, would not seem to have suggested a foreseeable danger.

Higher Standard of Care in the Future?

Heidi Li Feldman, a professor at Georgetown Law School, told *Business Insider* that as more mass shootings take place in the US, “It becomes more and more foreseeable if you operate certain types of venues, those venues will be seen as opportunities for mass shootings.”

Feldman thinks hotels and other entertainment venues need to appreciate the potential for mass murder crime and start taking stricter measures to protect the public.

According to Feldman, “If a certain type of crime is established as regularly occurring on certain premises, then any player in the industry could be held legally liable if it didn’t take preventative measures.” As an example of this, she says fear of this type of lawsuit has helped persuade some hotels to put up signs telling guests to store valuable items in safes, and some malls to put security guards in parking lots after dark.

Security Upgrades

After the shooting, some Las Vegas hotels such as The Wynn Resort added new security measures, such as scanning guests with metal detectors and putting

bags through X-ray machines. Other upgrades will probably include retraining employees to conduct random background checks on guests, paying closer attention to unusual guest behavior and making customers agree not to bring weapons on the premises.

Probably Not a Foreseeable Event

Las Vegas lawyer Stephen Walburg expressed doubt to the *Las Vegas Review-Journal* that victims of the massacre and their families would be able to prove that the attack was a “foreseeable event.” He compared the massacre to the shooting inside the Century16 movie theater in Aurora, Colorado, in 2012.

Like Paddock, “Aurora shooter James Holmes planned his midnight attack well in advance, slipping well-armed back into the theater through an exit door he propped open.” The jury ruled in favor of the theater, deciding that the attack could not have been foreseen. Witnesses for the defense testified that methodical, lone wolf shooters like Holmes [and Paddock?] are “the toughest to predict.”

“This is not a case that I would want to take. It is going to be an uphill battle,” said Walburg.

If a suit is filed against the hotel, it would probably settle out of court, according to Feldman. MGM Resorts doesn’t want to give the matter more publicity and they “certainly don’t want to be seen as heartless in their treatment of victims,” she said. ■

Avoiding Winter Storm Damage

It’s been an unusually damaging year of wildfires and hurricanes. As those kinds of events recede we need to look ahead to the always costly winter storm season that will soon begin.

As you read this article, some business owners have already experienced damage from hurricanes. But more bad weather from winter storms — including windstorms, snow and ice — is coming soon. Is your business prepared?

When it comes to causes of loss, winter storms rank third in terms of the dollar value of damage they cause, second only to hurricanes and tornadoes. According to *Forbes*, a “simple” snowstorm can cost well over a billion dollars. The billion dollar losses come from lost productivity and lost sales.

Are You Prepared?

Snow, ice, sleet: Organizations operating in areas that have freezing temperatures have specific insurance needs. The basic “named perils” property policy covers your buildings and contents from damage or loss caused by specific perils, or causes of loss, named in the policy. These include fire, lightning, explosion, windstorm or hail, smoke, and more. However, these policies do not include coverage for falling objects; weight of snow, ice or

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sleet; water damage or collapse.

The most common types of property damage caused by severe winter weather are roof damage or collapse due to snow, ice or sleet, and water damage from burst pipes or “ice dams.” Ice dams occur when water fails to flow properly through gutters, allowing it to seep into a building, damaging ceilings and walls. The resulting water damage would not be covered by a basic “named perils” policy, nor would any of these other types of damage. (See the sidebar to remedy these gaps.)

High hurricane-risk areas:

In certain high-risk coastal areas of Southern states (including Alabama, Florida, Louisiana, Mississippi, North Carolina, South Carolina and Texas), the standard business property policy excludes windstorm coverage. In these areas, business owners might

have to obtain their windstorm coverage from a state-sponsored insurance pool, while a private insurer writes the rest of their property coverage. We can help you determine the amount of coverage you need.

Preventive Measures

Although you might have the right coverage for freezes, snow, ice or windstorm damage, you still need to maintain your property. Before winter starts, take the opportunity to evaluate your roofs. Large, flat roofs, those with heavy insulation and those in shady areas have highest risk of dangerous snow and ice build-up, as do roofs of varying levels, which can create drifts. Skylights and vents



can also cause structural weaknesses and leaks. Poorly insulated areas of roofs can also cause problems by allowing heat to escape, causing snow to melt and refreeze.

Snow causes the most problems when it

accumulates over time. The actual weight of the snow doesn't depend on its depth, but rather the amount of water that it contains. Water content varies because of the difference in snow crystal structure. In general, snow that falls at warmer temperatures will be denser; snow also packs down over time and becomes denser. Zurich Re, a reinsurance company, estimated that one foot of dry snow weighs about three pounds per square

foot, while wet snow can weigh as much as 21 pounds per square foot. If snow accumulations occur in your area, plan now on how you will safely remove them.

Likewise, in high-wind areas, roofs, windows and doors can allow wind to enter and are your building's most vulnerable areas. Checking structures on a regular basis to ensure they are in proper repair and meet current codes can help you prevent major damage.

You will also want to ensure your business has enough business income coverage to weather a loss in income due to damage from snow, ice, windstorm or other covered cause.

For more information on preparing your business for winter's challenges, please contact us. ■

Ways to Fill Winter Storm Insurance Gaps

To cover many of the winter storm property insurance exposures not covered by named peril insurance policies, businesses can buy one of these types of property policies:

- ✱ a broad form property policy, which covers the basic named perils, and adds coverage for falling objects; weight of snow, ice or sleet; water damage (from certain causes) or collapse (from certain causes).
- ✱ an “all-risks” policy. This type of policy covers your business from property damage or loss due to all causes, unless specifically excluded by the policy. Typical exclusions include nuclear hazard, war and military action, earth movement, flood, wear and tear, and more.
- ✱ a business owner’s policy (BOP). The standard BOP offers a package of coverages for the typical small to mid-sized business needs. These include property coverage, business income coverage, general liability coverage, and coverage for autos you borrow or rent for business purposes.

Please contact us to obtain these broader coverages for your insurance program. ■



Insurance Buyers' News



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