

Catastrophic Property Alert

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While our thoughts go out to those affected by Hurricane Irma, we also want our clients to know that we are available to help. The damage left in Irma's wake is devastating, and as you most likely know Florida is experiencing significant property damage as a result of the storm.

Often catastrophic losses become high profile, bringing external considerations into the claims adjustment process. While external considerations do not have a direct impact on the interpretation of policy wording and coverage, the higher profile claim requires an elevated level of attention to time considerations in the claims process and to the management of expectations.

During these difficult times, it may be helpful to consider some of Florida's unique statutes, legal rulings, and governmental policies concerning hurricanes, floods, and surges. Here a few items to keep in mind:

- In 2012, after Hurricane/Tropical Storm Isaac, the Florida Office of the Insurance Commissioner advised insurers that they could not apply a "hurricane deductible" to damage caused by Isaac after it was downgraded to a tropical storm. It is likely that the Commissioner will do so with Irma as well. This may become a significant issue where inland flooding of rivers causes damage after the hurricane passes.
- Florida has a Valued Policy Statute that applies to dwellings - not commercial structures - that are totally destroyed, Fla.Stat. 627.702. Florida courts have held that where a dwelling is totally destroyed by a combination of wind and flood, an insurer must pay the full value regardless of whether the policy contains a flood exclusion.
- Florida Building Code §1521.4 requires an entire roof system or section be replaced if more than 25% of the total roof area or section is replaced; however, where a policy excludes Increased Costs to Comply with an ordinance or law, the policy may not cover the costs to replace undamaged roof portions.
- TIV deductibles are strictly construed. Where a TIV deductible stated "3% of the values at risk per building," a Florida court held it to be based upon the specific value of each building affected by the windstorm and not the total value of the policy or all structures covered by the policy.
- Florida upholds policy provisions that exclude coverage for wind-driven rain unless the wind event first causes damage to the structure that creates an opening through which rain then enters. (Note: keep in mind that ASTM 1105 demonstrates that wind speeds in excess of 90 mph create a vacuum inside of buildings that sucks water inside through existing openings.)
- The issue of causation (hurricane v. flood/surge) that was a headache in Louisiana is still being considered by the Florida Supreme Court. We will continue to watch this issue as it develops, and to update you accordingly as this may affect sublimits and deductibles.
- Florida has a liberal Plaintiff's Attorney Fee statute that, upon providing six-month's notice, counsel can assert a claim for fees from the first dollar.
- Florida strictly regulates public adjusters and contractors, so please obtain a letter of representation if you are dealing with anyone other than the insured on a claim, no matter exposure at issue.

For many years, Chartwell attorneys have assisted clients with claims arising out of CATs, hurricanes, tropical storms, and other named storms, snowstorms and hail storms throughout the United States, including Hawaii and the Caribbean. While several of our attorneys maintain national CAT/Property practices and can assist clients in each affected state, Chartwell also has seven offices located throughout Florida. A map of our Florida offices' locations and a list of our attorneys are enclosed.

Our CAT coverage and litigation experience includes claims arising from industrial, commercial, municipal, power generation and transmission, resort and hospitality, retail, medical, and residential properties and with quota share market and individual underwriters. Our clients include most major domestic, London, Bermuda, and European insurers.

Chartwell attorneys work closely and collaboratively with our clients and their retained independent adjusters, experts and consultants to ensure prompt, accurate and legally defensible positions on claims issues. Our attention to details ensures the fair and timely assessment of all available information and the proper application of policy provisions in accordance with the relevant legal standards.

In the wake of catastrophic events, we realize our clients will confront a myriad of complex legal issues and that time is of the essence. To assist our clients in these often frantic and disastrous situations, Chartwell Law's Rapid Response Team is available 24-hours, seven days a week to help clients identify and prepare for those legal issues, preserve their interests, and minimize exposure to future liability.

Lastly, Chartwell Law is committed to helping Florida and Texas recover and has launched a fundraising campaign to aid the victims of Hurricanes Irma and Harvey. Please help us by donating to [Chartwell Law's GoFundMe Page.](#)

If we can be of any assistance to you during these hectic times, please feel free to call upon us. We appreciate the opportunity to serve your legal needs and for your confidence in our work.

Regards,

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