

## Features

### 35 Legal Lessons Following a Busy CAT Season

By Jason Wolf, Koch Parafinczuk Wolf Susen

*Lawsuits related to multiple hurricanes question some claims practices.*



# LEGAL LESSONS FOLLOWING A BUSY CAT SEASON

By Jason Wolf

**A**lthough June 1 marks the official start of hurricane season, insurers are still dealing with claims from Harvey, Irma and Maria, and scrambling to sort out the mess created in the storms' aftermath. The legal problems arising out of those windstorm claims will continue to bedevil adjusters for months, if not years, to come.

Those in the C-Suite are working on big-picture and organic, company-wide changes to ensure that flaws in the way the storms were handled are smoothed over, and that best practices are in place for this storm season. Independent adjuster firms that experienced staffing shortages will need to reassess and retool before another round of storms.

In the meantime, those handling the day-to-day activities in the wake of a catastrophe are figuring out how to do a better job with the existing storm claims and improve the process for the next time.

#### What happened last year?

One of the problems bedeviling carriers now is that almost no one was prepared for the sheer volume of claims. It is not breaking news that everyone was busy last summer, but now carriers are dealing with the downstream impact of the volume as public adjusters and plaintiff property lawyers become involved in the claims process. Every insurance company has a detailed catastrophe plan in place, but in many instances, those plans were inadequate for the series of devastating hurricanes that hit large portions of the U.S. and Caribbean.



What happened as a result? Several factors stand out:

- Hasty inspections that clearly ignored damaged parts of the home;
- Delayed follow-up because adjusters were too busy or actually left an area because they were only called in for a few weeks;
- Lower than usual estimates due to rushing through claims; and
- Slightly unusual claims decisions that would never have been made except for the windstorms.

#### What should you do now?

Planning is critical when preparing for future catastrophic events. Here are several things to consider as part of that process:

Claims denied due to long-term water damage may end up in litigation because it is nearly impossible to prove that a property was not further damaged by the hurricane. While it may be true that a worn and poorly maintained structure was already damaged, persuading a jury that no new damage occurred from the windstorm is not easy to do.

If emotions did not enter into a jury's decision, the carrier's defense attorney would painstakingly explain that while the hurricane affected the house, it could not have caused any more damage than already existed because the house was already in poor condition. Realistically, a jury would find that new damage affected at least one small part of the covered building, making the carrier liable for a judgment.

Claims handled by adjusters who took too long to respond to the

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customer, who did not perform their duties in a timely manner or did not do a thorough enough job will not be winnable at trial.

It is one thing to review a claim within an insurance company's office and determine that an adjuster went by the book and complied with statutorily mandated deadlines. That does not mean it is a winning lawsuit.

The best way to protect against the claims handling process resulting in an adverse jury verdict is to consider how a lengthy delay would be interpreted by a layperson who just wanted her check so she could patch her leaky roof and fix her stained ceiling.

**Looking to the 2018 storm season** Despite the problem claims still in process, the 2017 storm season was not a catastrophe for the insurance industry. The positives are that the storms could have been substantially worse; the majority of claims were handled in a timely manner — even

if there were issues with some of them; and the industry learned valuable lessons about how to proceed after more than a decade of minimal windstorm activity.

Going forward, it is up to everyone to continue to adapt, both in terms of handling the balance of the 2017 windstorm claims, as well as how they prepare for catastrophe claims in 2018 and beyond. 🍷

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