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Insurance Coverage

As New York City's nonprofit sector mobilizes in response to Hurricane Sandy Lawyers Alliance is ready to assist. With over 10 years of disaster relief experience Lawyers Alliance has helped nonprofits with disaster relief legal matters related to fundraising and grant-making, expansion and downsizing, real estate contingencies, and compliance with tax-exempt organizations law. If your organization has questions about assisting relief efforts or victims of Hurricane Sandy, contact Lawyers Alliance for support.

Question: How can my organization determine if its insurance will cover the property damage sustained as a result of damage from Hurricane Sandy?

Answer: The organization should first gather complete copies of all insurance policies and receipts that document expenditures and out-of-pocket losses due to the disaster. If the organization cannot locate complete copies, call the insurance broker/agent or insurer. Gathering all of the required documentation will facilitate not only the filing of an insurance claim, but will also provide a complete file for review by counsel should legal advice be necessary. In reviewing each insurance policy, check the Policy Declarations (sometimes called the Information Page) to confirm the policy number, the name of the insured, the policy period (to ensure that the policy was in effect on October 28th and 29th) and whether the property in question is, in fact, insured under the policy. Also, the organization should check for any limitations on coverage under each policy, including, in particular, deductibles, caps on the insurer's total liability and policy exclusions, especially for windstorm and flood. Make sure to check all endorsements that are applicable to each policy in addition to the Information Page and the standard pre-printed Policy Terms and Conditions.

Question: Will my organization's insurance cover the lost profits and other expenses suffered as a result of the property damage caused by Hurricane Sandy?

Answer: Your insurance policies may not only cover property damage, but may also provide for some form of business interruption coverage in connection with the property damage. Business interruption insurance typically provides for reimbursement for loss of net profits while an organization's operations are closed due to property damage, plus continuing operating expenses, including payroll, rent, and any additional expenses incurred (e.g., additional expenses for transportation, communications and reconstructing lost documents). Typically, this coverage will last only for the reasonable amount of time necessary for the organization to resume operations. Thus, there will not be coverage for those losses sustained after the organization has resumed operations. This is true even if, after resuming operations, the organization is not yet operating at the level that it would have had no property damage occurred.

However, some policies may provide for extended business interruption coverage for loss of net profits and additional expenses incurred after the organization has resumed operations, but prior



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to the time that it is operating at the level that would have existed had no property damage occurred. It is important that the organization examine its policies so as to determine whether it has business interruption coverage, and, if so, what the extent of this coverage is.

Deductibles and caps on the insurer's liability may apply.

Question: If my organization did not suffer any property damage, will its insurance cover any lost profits and other expenses caused by Hurricane Sandy?

Answer: Some policies may include a "loss of ingress/egress" provision. Such a provision will provide coverage for the economic losses suffered by the organization when, as a direct result of the covered peril, access to the organization's property is impaired. For example, if the roads leading to the organization are flooded, a "loss of ingress/egress" provision would provide coverage to the organization for those losses that the organization suffered as a result. Some policies may also include coverage for those economic losses suffered by the organization when, as a direct result of the covered peril, access to the organization's property is prohibited by civil or military authority. These types of coverage apply even if the organization has not experienced any property damage, but the coverage is usually limited in duration. A typical period of recovery is two to three weeks.

It is important that the organization examine its policies so as to determine whether it has coverage for losses resulting from a loss of ingress/egress or an interruption by civil or military authority. If so, the organization should also consider how expansive the coverage is, and whether it is limited in duration.

Question: When should my organization notify its insurance agent or broker about its losses?

Answer: The organization should contact its insurance agent/broker by phone as soon as possible and notify them in writing about its losses. The Notice provisions generally state that the insurer must be notified as soon as practicable of any facts and circumstances that gave rise to the claim, including how, when and where the "occurrence" took place, the names and addresses of any injured persons, and the nature and location of any injury or damage arising out of the "occurrence."

Question: Where can my organization get additional information about insurance issues?

Answer: The Insurance Information Institute has published a list of insurance company claims filing telephone numbers, which can be accessed on the web at www.iii.org. The website also includes some pointers for filing a claim. For more information or to make a complaint, you can contact the consumer hotlines or websites of your state insurance department as follows:

New York: (800) 339-1759 www.dfs.ny.gov

Connecticut: (800) 203-3447 www.ct.gov/cid

New Jersey: (800) 446-7467 www.state.nj.us/dobi



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This legal alert was graciously prepared by Sutherland.

This alert is meant to provide general information only, not legal advice. Please contact Linda Manley at Lawyers Alliance for New York at (212) 219-1800 x 239 or lmanley@lawyersalliance.org or visit our website www.lawyersalliance.org for further information.

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