

More Questions than Answers

Sal Zaffino, Chairman & CEO, Guy Carpenter

A few short weeks ago, I would have expected a competitive, but routine renewal season. Katrina has changed all that. We have all seen the pictures of the devastation left in the storm's wake. From the wind damage to the widespread flooding to the terrible human toll that the event has taken on the area's residents, Katrina will unquestionably prove to be a catastrophic event of historic proportions.

The issues surrounding this event are numerous and very complex. The sequence of events and the resulting losses along with the sheer magnitude of the loss – which is likely to be on a par with Hurricane Andrew, if not larger – in a highly charged and politicized environment have the potential to lead to coverage disputes that may take years to resolve.

Some thorny questions are already beginning to surface.

What percentage of the loss is attributable to flood versus wind damage? Most U.S. homeowners policies exclude water damage including flood. At this time, can we presume that only the wind damage from Katrina, but not the storm surge damage or flooding from the breached levees is covered by homeowners policies?

Further complicating the issue, what if property is no longer inhabitable, and the government condemns it? Is there a superseding exclusion for such governmental action? If a property is bulldozed due to toxic debris, how does one make an evaluation as to whether flood or wind was the cause? Do riots or looting supersede the flood exclusion?

Louisiana also has a "valued policy law" similar to Florida's that requires insurers to pay the full

insured value of a policy on property deemed to be a total loss. While the Florida law is being tested in the courts, there is no way to know today how it will be resolved or what action other states may take.

In the meantime, there may be a great deal of pressure on insurers to cover various aspects of flood. For example, where a roof is torn off by wind but subsequent flood water does the rest of the damage, policyholders will probably argue that it should be covered under their wind insurance. While regulators and politicians may be hard pressed to force carriers to cover flood when the exclusion, for the most part, is not ambiguous, they may attempt to expand any sublimits on flood coverage where such coverage exists.

Aside from the myriad issues raised by the question of wind versus flood damage, we can expect to see extensive claims arising from business interruption and extra expense coverages under commercial property policies – not to mention offshore losses. There will also likely be claims from workers injured during business activities, as well as from the influx of rescue workers and other emergency personnel. Questions may arise about what constitutes an occurrence where coverage is per occurrence rather than per employee. If workers come in to help with the cleanup, is that part of the occurrence? And, how long after the hurricane event can insurers claim that certain workers compensation claims arose out of that event? An aggregation of accident and health claims – with similar coverage issues on occurrence – is also not out of the question.

Finally, given the propensity for litigation in the United States, there



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may be a great many third party suits in an effort to assign blame for anything from inadequately safeguarding weapons and ammunition inventories to abandoning the sick or the elderly.

We can envision a scenario where the policy exclusions hold, sublimits apply and the sizeable economic loss is addressed outside of the insurance and reinsurance industry. The opposite could also occur with exclusions dismissed and sublimits overruled, and the industry ends up assuming a sizeable portion of the total costs. In either case, primary coverage issues have the potential to become reinsurance issues.

Nearly two weeks later, there has been virtually no progress in properly assessing losses since adjusters haven't been able to access the affected areas in great numbers, if at all. We are not likely to know how some of the issues presented here will be resolved until they are better identified, the state insurance departments take a stand and courts begin to decide some of the more contentious coverage questions. This, no doubt, will likely take months, if not years.

We also don't know today how the lessons we learn from this event will change how we do business in the future, as events of similar proportion like Andrew or September 11, 2001 have done in the past.

In the meantime, I know that everyone at Guy Carpenter – from cat modelers helping clients to quantify their losses to claims specialists that assist in collecting losses to brokers trying to understand how Katrina might impact their client's next renewal – is committed to helping clients through this difficult situation.