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## Weathering the Storm: Insurance Recovery Following Hurricane Ike

Hurricane Ike caused massive damage in Texas with property damage estimated at \$12 billion and untold amounts in business interruption losses. It is now time to begin the recovery process. In handling the crisis, companies must quickly evaluate what insurance coverage is available to them. In addition to insurance for property damage, many policies offer coverage for lost income, normal operating expenses (like payroll) and additional expenses incurred to avoid or minimize the disruption of a company's business. Haynes and Boone's Insurance Recovery Practice Group can assist with the following critical steps to maximize a company's insurance coverage:

### 1. Understanding What is Covered

Each policy is different. The policy language must be carefully reviewed, and the client must understand what coverage is available under the policy. Many of the available coverages, like "civil authority" coverage, "ingress/egress" coverage, "service interruption" coverage, and "contingent business interruption" coverage may have never been used before, and the insured must fully understand the various benefits offered by its policy.

### 2. Understanding the Insured's Duties

After a loss, the policy has certain deadlines for the insured to meet; for instance, the policy generally requires that the company submit a proof of loss within 90 days of the loss. The policy also requires the insured to meet certain obligations such as mitigating losses and cooperating with the insurance company. The company must be aware of possible traps in preserving coverage.

### 3. Understanding How to Frame the Claim

It is the company's burden to identify the nature, scope and extent of the claim. This requires immediate and continued organization and documentation of the various components of the loss. How the claim is presented can make a significant difference in the amount of the recovery.

We have prepared the following checklist to help our clients take full advantage of their insurance coverage. For more information, please contact the following partners of Haynes and Boone's Insurance Recovery Practice Group:

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## Hurricane Ike: Assessing Your Property Damage and Business Loss

- ✓ Have you notified your property carrier, including excess carriers?
- ✓ Have you reviewed your policies to determine what coverages you have?
  - accounts receivable?
  - debris removal?
  - decontamination costs?
  - demolition and increased cost of construction?
  - expediting costs?
  - land and water contaminant or pollutant cleanup, removal and disposal?
  - protection and preservation of property?
  - service interruption?
  - gross earnings?
  - extra expense?
  - business loss income?
  - rental loss income?
  - civil authority?
  - ingress/egress?
  - contingent business interruption?
- ✓ Have you determined the various limits and deductibles for each of the coverages under your policy?
- ✓ Have you determined the time limits available for the various coverages?
- ✓ Have you attempted to mitigate your losses?
- ✓ Have you set up internal accounts to track the expenses incurred that relate to Hurricane Ike?
- ✓ Have you reviewed and calendared the policy's deadline to submit a sworn proof of loss?
- ✓ Have you determined whether to seek an extension of the deadline to submit the proof of loss?
- ✓ Have you thoroughly documented the loss?
- ✓ Have you retained consultants to assist you in determining the loss?
- ✓ Have you checked to see if your policy pays any amount for the retention of accountants, auditors, engineers or other consultants?
- ✓ Have you determined whether to seek a partial payment of loss payment?
- ✓ Have you determined how the policy provides for the valuation of damaged property?
- ✓ Have you reviewed the time periods during which business interruption losses are to be calculated?
- ✓ Have you determined whether your policy has a flood exclusion and, if so, how it affects coverage for wind-related damage under the policy and the governing law?
- ✓ Have you determined whether your policy has a mold exclusion and, if so, how it might affect coverage for your damaged property under the policy and the governing law?
- ✓ Have you reviewed the policy to determine whether it includes a limitation on when suit can be filed against the carrier in the event disputes are unresolved?
- ✓ Have you established regular communications with the carrier to minimize disputes?
- ✓ Have you reviewed the carrier's conduct in light of applicable statutes which often impose deadlines to acknowledge, investigate, and pay claims?