

## **Answers from Hurricane Katrina**

January 12, 2016

Ocean Beach Mainstreet Association

1868 Bacon Street, #A

San Diego, CA 92107

Dear Members of the Ocean Beach Mainstreet Association:

On August 29, 2005, Hurricane Katrina descended upon New Orleans and uprooted a diverse population and a vibrant business community. The first storms of El Niño struck San Diego last week and many homes and businesses are flooded. Personal property and inventory are damaged. Misinformation is rife and people have questions.

I have some answers from litigating Hurricane Katrina claims. I have therefore prepared the following informational memo based on general principles of law and a typical business owner's policy ('BOP'). I do not cover commercial policies, which are usually issued to large businesses.


- BOP Coverage
  - Buildings, business personal property, and third party liability are covered
  - Debris removal, theft, and loss of business income ('BI') may be covered
  - BI compensates the business for loss of income caused by an inability to carry on normal business operations due to damage to the business's building
- What To Know About BOP Coverage
  - Two conditions must occur before coverage is triggered. One, the damaged property must be 'covered property' and two, the damage must have been caused by a 'covered cause of loss.' Read your BOP to determine what is 'covered property' and what is a 'covered cause of loss.' Your business address should be a 'covered property,' and wind and fire should be a 'covered cause of loss.'
  - The business must suffer a 'direct physical loss or damage.' Courts have understood that phrase in different ways.
  - BOP does not cover flood. Flood is generally understood to mean overflowing water from a body of water like an ocean, lake, river, or artificial drainage. The National Flood Insurance Program (NFIP) offers flood insurance. The website is [floodsmart.gov](http://floodsmart.gov). There's generally a 30-day waiting period for flood insurance coverage to kick in.

- BOP coverage is subject to all exclusions, limitations, policy limits, policy periods, and conditions as set forth in the BOP. The insurance company will expect you to have read and understood the policy.
- Steps A Business Should Take After Damage Occurs
  - Directly notify the insurance company of *any* damage, not just damage you think is covered
  - Take reasonable steps to protect the property from further damage
  - Obtain receipts, inventories, photographs, records, and other documentation of damage and loss
  - Complete and submit a Sworn Proof of Loss, if applicable
- Steps An Insurance Company Should Take After Notice Of Damage
  - Acknowledge receipt of notice
  - Provide notice of coverage
  - Investigate the loss
  - Promptly pay all undisputed amounts

### Closing Points

If you're displaced, consider Regus, which has 18 locations throughout San Diego. It is currently offering plug-and-play furnished offices for displaced businesses. Disclosure: I'm a tenant of Regus. Speak to your lawyer if you don't understand your BOP. If you don't have flood insurance, speak to your insurance agent. Contact your insurance company immediately if your business was damaged by El Niño.

Respectfully,



Evan W. Walker

### About Evan W. Walker

Evan's first years of law practice were spent litigating Hurricane Katrina claims. As a young attorney, he defended insurance companies against property damage claims brought by homeowners and business owners. He stopped working for insurance companies after he opened his own firm. His La Jolla practice is focused on personal injury and El Niño property damage.