Managing a Loss Site After a Catastrophic Event

“To be prepared is half the victory.” – Cervantes

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Catastrophic property losses resulting from hurricanes, tornadoes and other natural disasters impose large-scale organizational demands on claim and subrogation professionals. It is important to understand the issues that arise from a catastrophic loss with respect to managing the scene, preserving evidence, interacting with public sector authorities, and addressing the needs of your insureds. This Alert discusses these issues and provides an outline to serve as a guide in helping claims and subrogation professionals to manage a loss site in the context of a catastrophic disaster, while simultaneously identifying and preserving a subrogation opportunity.

Management of a catastrophe site involves ten essential tasks, each of which is discussed in detail below:

1. Identify all parties in interest;
2. Identify the area of interest for investigation;
3. Delineate the area perimeter for security and evidence preservation;
4. Develop priorities and procedures for access to the site;
5. Develop protocols and procedures for investigation and site demolition;
6. Develop protocols and procedures for evidence removal, storage and preservation;
7. Document the scene;
8. Establish communication systems;
9. Develop protocols and procedures for any testing or destructive examination of evidence or debris; and
10. Establish agreements for sharing costs and expenses for site control, site security, site maintenance, and rental of equipment needed for investigation and/or demolition.

1. Identify All Parties in Interest

In addition to the insured, interested parties may include:

   a) Liability and property insurers who may be called upon for indemnity;
   b) Third parties who may be targets for liability assertions; and
   c) Governmental agencies with jurisdiction, i.e. ATF for fires and explosions, OSHA for employee safety issues, local law enforcement and fire authorities for criminal and/or code compliance issues, the Chemical Safety Board for dust and chemical explosion, the NTSB-DOT Pipeline Safety Commission for fuel gas or liquid explosions and the NTSB for aircraft or interstate train or large motor vehicle accidents.

2. Identify the Area of Interest for Investigation

The area subject to investigation will include the immediately affected area involved in the catastrophe. It will also include areas immediately adjacent to the “storm center” insofar as additional details concerning propagation of forces and/or debris may be involved. A survey and grid system may be beneficial for a large area, and can also be useful for tagging evidence and materials retained for subsequent identification of the location of origin.

3. Delineate the Area Perimeter for Security and Evidence Preservation

Maintaining the security of the site, limiting non-essential access to the site, and the preservation of evidence may require fencing, guards around the clock, cameras, proper lighting and other protective measures.

4. Develop Access Priorities, Protocols and Procedures

Access to the site requires acknowledging and generally submitting to the priorities of governmental officials, life safety personnel and emergency response personnel, and cooperating with those agencies. It also requires cooperating with the interests of the insured, property and liability insurers, potential plaintiffs, their counsel, and other interested parties. This will also involve drafting a comprehensive release/indemnity agreement for persons seeking access to dangerous area.
A clear line of authority must be established for requesting and obtaining site access, due to concerns about safety, security and preservation of evidence. In many cases it will be advisable to identify a central authority and clearing house for such requests. It may also be appropriate to limit hours of access and to require a period of advance notice prior to site access.

5. DEVELOP AGREED PROTOCOLS AND PROCEDURES FOR INVESTIGATION AND SITE DEMOLITION

Experts representing all interests must be involved in drafting protocols and procedures, which will be secondary to the involvement of the governmental authorities with jurisdiction. In good circumstances, the governmental authorities will cooperate with the private interests to negotiate protocols and procedures. Generally, however, they tend to move ahead of the private interests in order to establish that (a) the cause of the accident was not within the jurisdiction of the particular agency, or (b) investigating the cause of the event will be more work and expense than the agency personnel wish to incur, in which case the agency may want to “piggy back” on the investigations of the insurers and other interested parties.

6. DEVELOP AGREED PROTOCOLS AND PROCEDURES FOR EVIDENCE REMOVAL, STORAGE AND PRESERVATION

For preliminary storage of evidence taken from the catastrophe site, it is generally advantageous to identify a nearby area that is not affected by the incident. The storage area should be reasonably flat and able to be contained securely by a fence. A system for tagging evidence must be developed so that items can be traced back to specific locations. If demolition is to take place, debris should be stored in a specified location, even if not specifically tagged as evidence, until it is reasonably clear that no interested parties need or want access to the debris.

7. DOCUMENT THE SCENE

Early documentation of the scene, through photographs or video, is crucial. If the scene is to be destructively altered, detailed documentation of changes occurring in that process should also undertaken.

8. ESTABLISH COMMUNICATION SYSTEMS

It is essential to determine how information will be communicated to interested parties. Email is generally the fastest and most effective, particularly with experts and counsel. If a “command and control” facility is set up for insurers or other interests at the site, phones, broadband access, etc. will likely be necessary for operations. It is very useful for insurers to have a temporary trailer or other facility available for the use of experts and adjusters while on site.

9. ESTABLISH AGREED PROTOCOLS AND PROCEDURES FOR ANY TESTING OR DESTRUCTIVE EXAMINATION OR ANALYSIS OF TAGGED EVIDENCE OR DEBRIS

This will primarily involve the participation of private experts and counsel once the governmental authorities have finished their work at the site.

10. ESTABLISH AGREEMENTS FOR SHARING THE COSTS AND EXPENSE FOR SITE CONTROL, SITE SECURITY, SITE MAINTENANCE, AND RENTAL OF EQUIPMENT NEEDED FOR INVESTIGATION AND/OR DEMOLITION

When multiple parties with similar interests are involved in the loss investigation, there is obvious opportunity for cost sharing. Sharing agreements reasonably can be negotiated for expenses incurred for evidence storage, resident site managers, heavy equipment and other costs.

CONCLUSION

There is no disadvantage to planning and preparedness. In the subrogation context, where unexpected events are routine, planning is essential. For additional information on the management of a catastrophic loss site, please contact Jefferson C. McConnaughey, (404.572.2056, jmcconnaughey@cozen.com) in our Atlanta office.