

What Affected Nashville Businesses Need to Know About Insurance Coverage After the 2020 Tornado *Ten Quick Questions & Answers*

Question 1: My business suffered damage in the Nashville tornado. What is the first thing I need to do regarding an insurance claim?

Answer: If you do not have a lawyer, and before you call your carrier or agent, make sure to read your insurance policy. Of the types of insurance policies out there, most businesses typically are insured by a CGL policy (Commercial General Liability). You may also have a separate policy specifically covering the business's property, such as a business owner's insurance policy if your business owns the real estate or commercial or business renter's insurance policy if your business operates out of a leased space. It is impossible to cover the different riders, exclusions, added coverages, etc. that may vary from policy to policy. But the bottom line is that the written terms of the applicable policy or policies will be the sole determinant of coverage.

Practice Tip: Do not rely on your agent to explain your coverage. If you believe you may have a covered claim, you must get an answer from the insurance company's claims department. If the claim is denied, make sure that denial is provided to you in writing so you can assess for yourself the specific reason for the denial. A business should not necessarily just accept the insurance company's denial. Policy language can be ambiguous or misconstrued by the insurance company, and even if it looks like the claim is not covered, a court reviewing an insurance contract will construe an ambiguous provision against the insurance company and in favor of the insured. So, if the claim is significant, a business owner should consider consulting an attorney who understands the mechanics of coverage and can help make it more likely that a claim gets paid.

Question 2: What should I do to document the damage to my property or business?

Answer: Take hundreds of pictures and videos. You will not regret taking too many pictures, but you definitely might regret taking too few. As a baseline, take photos and videos of all of the property and damaged areas before any remediation, mitigation or cleanup work begins. In situations where immediate work is needed to prevent further loss or damage to your property or business, you will need documentation to show the damages before repair.

Practice Tip: Along with pictures, start a property inventory list in Excel. The insurance company will require you to produce a completed list of the damaged (and even undamaged) property, including quantities, costs, values, date of purchase and amount of loss claimed. In addition to damaged or destroyed property, also document and inventory any purchase you make or expenses incurred to replace property, to clean up, or to repair damages.

Question 3: My insurance company wants me to make a recorded statement today. What are my options?

Answer: While you are almost certainly obligated to give a statement in order for a claim to be covered, there is no prohibition on seeking the advice of an attorney prior to giving that statement. Obviously, you will not lie to the insurance company, but you might say or phrase something in a way that inadvertently causes you to lose coverage.

Practice Tip: The insurance company may examine any insured under oath, about any matter relating to the insurance or the claim, including an insured's books and records.

Question 4: I might lose a big contract because the tornado damage caused me to shut down my business. Is this covered by my insurance policy?

Answer: Maybe. As explained above, the relevant policy language will govern. Often, damages resulting from the cancellation of contracts are covered if the cancellation is directly caused by the suspension of the business's operations.

Question 5: The tornado caused no direct physical damage to my property, but we had to close for a period of time because the tornado knocked out electricity, water, gas, sewer, or other utility services necessary for the business to operate. Am I covered for losing income while the business was closed?

Answer: Maybe. Here again, the relevant language of your specific policy will determine whether the claim is covered. Many businesses affected by the situation described in the question will be told that the loss of income is not covered because the business did not sustain direct physical damage and the outage is not the result of a covered peril. Businesses should not accept this outcome without first reading their relevant policy and/or consulting with a property insurance attorney.

Question 6: All of my office art was damaged from the rain and sprinklers. Is this covered by my insurance policy?

Answer: Coverage for fine art is usually limited in a standard CGL policy. However, many policies have riders that expand fine art coverage. Also, if rain/water destroyed the art, you will need to show that building first sustained damaged from tornado wind before the water came in.

Practice Tip: Basic coverage for fine art is usually limited to \$25,000. If the art was owned and loaned to the business, you might have additional coverage under the art owner's personal homeowner's insurance policy.

Question 7: The office building we lease was destroyed by the tornado. What are the obligations of the tenant and landlord?

Answer: These issues should be explained or discussed in the lease. Most leases require one or both of the landlord and tenant to have property insurance coverage in force during the term of the lease.

Practice Tip: Make your landlord put everything in writing, especially if you are not permitted back on the premises because of the damage.

Question 8: I need money this week from insurance or my business will shut down. What do I do?

Answer: You may have coverage for “expediting expenses”. That is, in the event of direct damage to covered property, the insurance company will pay for reasonable and necessary expenses to make temporary repairs or expedite permanent repairs, including overtime wages.

Practice Tip: This is where written documentation is key. Explain the reason for the expedited expense, reference the section of your policy, and make a demand on the insurance company without any waiver to file additional claims. Most policies state that “expediting expenses” do not include expenses you incur for the temporary rental of property or temporary replacement of damaged property.

Question 9: Some of my customers have failed or refused to pay money owed for reasons related to the tornado destruction and my business’s inability to collect. Any coverage available for this loss?

Answer: You might be covered for this type of loss. Insurance companies will often pay for amounts due from your customers that you were unable to collect or other reasonable expenses that you incur to re-establish your records of accounts receivable.

Practice Tip: This type of coverage is usually limited to \$25,000, and the insurance company will not pay for loss caused by or resulting from bookkeeping, accounting or billing errors.

Question 10: The tornado destroyed a lot of personal items owned by the business employees, such as stereo equipment, custom office chairs, etc. Is there any protection or coverage for their items?

Answer: Your insurance coverage might extend to the personal items of your employees if that property was located at the premises and destroyed or damaged because of the covered loss.

Practice Tip: Payments for this coverage should be in addition to your limits of insurance.