

Hurricane Otis Acapulco

Looting - underinsurance



Acapulco, one of the main tourist destinations in Mexico, suffered extensive damage from Hurricane Otis (category 5) when it struck on Wednesday, 25 October 2023.

Hurricane Otis caused severe floods, mudslides and violent gusts, damaging the core infrastructure of the city, high-rise buildings, 80% of hotels and 16,000 homes.

In addition, power and Internet networks have been taken out, along with transmission lines, electrical substations, and power plants. It is expected that it will take months, probably more than a year, until operations can return to normal.

To understand the magnitude of Hurricane Otis, consider that for the losses claimed due to Hurricane Wilma, the total amounted to nearly USD 3 billion. However, Hurricane Wilma did not cause the level of devastation that Otis has caused in Acapulco.

We should note at the outset that insureds may not have always bought cover for hurricanes - Acapulco has not witnessed a major hurricane in the past 26 years, Hurricane Pauline being the most recent one, in 1997.

Underinsurance

From a legal standpoint, as regards underinsurance, one of the main issues when adjusting a loss following a Nat Cat event is to determine whether the insured values are up to date.

Updating insured values on each year of renewal can be costly. As a result, insured values can be inaccurate. In addition, some insureds do not declare the actual value of insured property, resulting in lower premiums for the insured. However, as a result of this practice, the premium paid by the insured does not reflect the value of the property insured. In view of the above, it is reasonable to assume that the adjustment of the claims following Hurricane Otis could be significantly impacted by underinsurance.

Article 92 of the Mexican Insurance Contract Law sets out that underinsurance operates automatically unless the policy states otherwise "*Unless otherwise agreed, if the insured sum is less than the insured interest, the insurance company will respond proportionally to the damage caused.*"

When Article 92 is applied, indemnity payments should be reduced proportionally to the underinsured value. This can cause some discontent if the insured is not familiar with this insurance concept.

In our experience, a particular issue arises in the context of government accounts.

State-owned companies get involved in the drafting of the terms and conditions of the insurance policy and often remove any under-insurance language contained in the policy. It has been argued that if the under insurance provision has been deleted, it should be understood that the parties have "otherwise agreed" for the purposes of Article 92.

Once the wording is approved by the State-owned insured, the policy is placed through a public tender. However, when the wording is presented to reinsurance underwriters by the broker, underwriters will put back average clauses, in case the insured values are inaccurate.

It would be expected that the inclusion of these average clauses should be tracked through to the local policy. However, this is not always the case generating important coverage differences between the reinsurance and the underlying policy.

In our experience, it is not until a loss takes place that the insured values are looked at in detail. In the case of Hurricane Otis, we expect that issues related to under-insurance will arise soon.

Looting

Mexican authorities have reported that almost 90% of retail stores and shopping centres in Acapulco were looted in the aftermath of Otis's devastation.

Several coverage issues arise in the case of looting following a hurricane, for example, whether it is possible to distinguish between the damage caused by the hurricane and the damage caused by looting.

There could also be issues in determining whether there can be two (or several) different events and as a result, more than one deductible.

Broadly speaking, if looting is not excluded in an All-Risks policy, then it should be covered, regardless of whether or not it results from a Nat Cat event. However, coverage for contents in this type of policy is often sub-limited.

Looting is considered theft under the State of Guerrero (Acapulco) criminal code, article 223. In practice, "looting" basic food and necessities will not be prosecuted. According to article 228, looting committed "*taking advantage of the situation of confusion caused by a catastrophe...*" will add an extra 2 to 6 years to the period of imprisonment.

Getting the criminal prosecutor involved will assist loss adjusters (and Reinsurers) in terms of evidence. However, some All-Risks policies exclude theft.

Finally, looting can involve criminal organizations. This raises the possibility that PV policies respond, but it will be necessary to show that the loss falls within the cover as defined in the policy.

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