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ALERT

## Don't Let The One-Year Anniversary of Hurricane Katrina Blow Away Your Insurance Coverage

By Joshua Gold

This summer, the last week of August will mark the one-year anniversary that Hurricane Katrina descended and devastated life, property and business in the Gulf Coast region. Many affected policyholders, busy rebuilding and repairing their businesses, have been forced to simultaneously deal with their insurance companies in an effort to secure the full benefits of their insurance protection. Because many businesses' insurance claims for hurricane damage still are pending and have not been resolved, policyholders must ensure that they do not run afoul of time-sensitive provisions contained within their insurance policies, including those which address the policyholder's right to sue its insurance company for a denial of coverage. These issues also apply to deadlines for hurricanes Rita and Wilma.

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### *Suit Limitation Provisions*

The vast majority of insurance policies contain clauses calling for the policyholder to do something within a certain amount of time, such as provide notice of a claim or file a proof of loss. What many policyholders do not know is that certain types of insurance policies also contain clauses known as "suit limitation" provisions. Suit limitation provisions are used by insurance companies to shorten the statute of limitations for breach of contract claims in an effort to insulate themselves from policyholder suits when insurance coverage is denied — importantly, even in instances where there is no reasonable basis to deny the insurance claim. Suit limitation provisions are frequently included in property insurance policies and crime/fidelity insurance policies. Once in a while, policyholders may find suit limitation provisions lurking in other insurance policies, including liability insurance policies.

For example, some property insurance policies contain clauses similar to the following "Suit Against the Company" provision:

No suit, action or proceeding for the recovery of any claim will be sustained in any court of law or equity unless **the legal action is started within 12 months after inception of the loss.**

Even those insurance policies which appear to contain a longer suit limitation period, such as two years, must be carefully examined. Some property insurance policies (insuring the peril of fire) with a suit limitation period of two or more years may still seek to incorporate a shorter limitation period

ANDERSON KILL & OLICK, P.C.  
1251 Avenue of the Americas  
New York, NY 10020  
(212) 278-1000 Fax: (212) 278-1733

ANDERSON KILL & OLICK (Illinois) P.C.  
230 West Monroe Street, Suite 2540  
Chicago, IL 60606  
(312) 201-9516 Fax: (312) 201-9548

ANDERSON KILL & OLICK, P.C.  
Two Sound View Drive, Suite 100  
Greenwich, CT 06830  
(203) 622-7668 Fax: (203) 622-0321

ANDERSON KILL & OLICK, P.C.  
One Gateway Center, Suite 1510  
Newark, NJ 07102  
(973) 642-5858 Fax: (973) 621-6361

ANDERSON KILL & OLICK, P.C.  
1600 Market Street, Suite 2500  
Philadelphia, PA 19103  
(215) 568-4202 Fax: (215) 568-4573

ANDERSON KILL & OLICK, L.L.P.  
2100 M Street, N.W., Suite 650  
Washington, DC 20037  
(202) 218-0040 Fax: (202) 218-0055

[www.andersonkill.com](http://www.andersonkill.com)



## who's who

**Joshua Gold** is a shareholder in the New York office of Anderson Kill & Olick, P.C. Mr.

Gold has extensive experience in insurance coverage analysis, consulting and litigation, with an emphasis on directors' and officers' insurance, errors and omissions insurance, online and high-tech liability and property insurance coverage issues and off-shore market insurance products. Mr. Gold can be reached at [jgold@andersonkill.com](mailto:jgold@andersonkill.com) or (212) 278-1886.

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in situations where a state's standard 165 line fire insurance policy allows for a shorter suit limitation period. While there may be a host of arguments that a policyholder can make to avoid the forfeiture of coverage that insurance companies seek under these suit limitation provisions, policyholders, nevertheless, are advised to treat these clauses very seriously and plan accordingly.

### *What You Need To Do Now!*

For any insurance claim stemming from last season's hurricanes, suit limitation clauses must be reviewed and addressed promptly given the looming deadline for some policyholders and the reality of summer schedules and vacations. Since many suit limitation clauses call for a suit period as short as 12 months, many insurance companies will begin to argue that policyholders cannot compel them to pay insurance claims after this August, even in cases where the insurance company itself has wrongfully delayed the claims adjustment process or has no legitimate reason to avoid coverage. This is especially true for policyholders whose insurance claims involve lost business income (aka business interruption). Indeed, many hurricane-related business income losses will continue beyond the period set forth in certain suit limitation provisions.

### *Refusal to Provide Coverage*

If a policyholder finds itself coming up on the deadline to file suit for an insurance company's refusal to provide coverage, a couple of options are available. One option is to seek an extension of the suit limitation period. Such an extension should always be in writing and should expressly indicate the length of time for which the extension is being granted. In some jurisdictions, the extension cannot be indefinite. Second, policyholders can file suit and then move to stay the proceedings if further negotiations can resolve the insurance claim. Last, if the writing on the wall indicates that the insurance company is not going to honor the insurance claim no matter what further discussions take place, then a policyholder should not let the matter linger and, instead, consider filing suit before the limitation period closes so as not to imperil its insurance coverage rights.

### *Conclusion*

At a very minimum, policyholders of all kinds, including corporations, individuals, small businesses and governmental agencies, should carefully review their insurance policies, and make sure to correctly calendar the date by which their insurance policies call for suit to be commenced. To miss this date could jeopardize even a well supported and valid insurance claim. ▲

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