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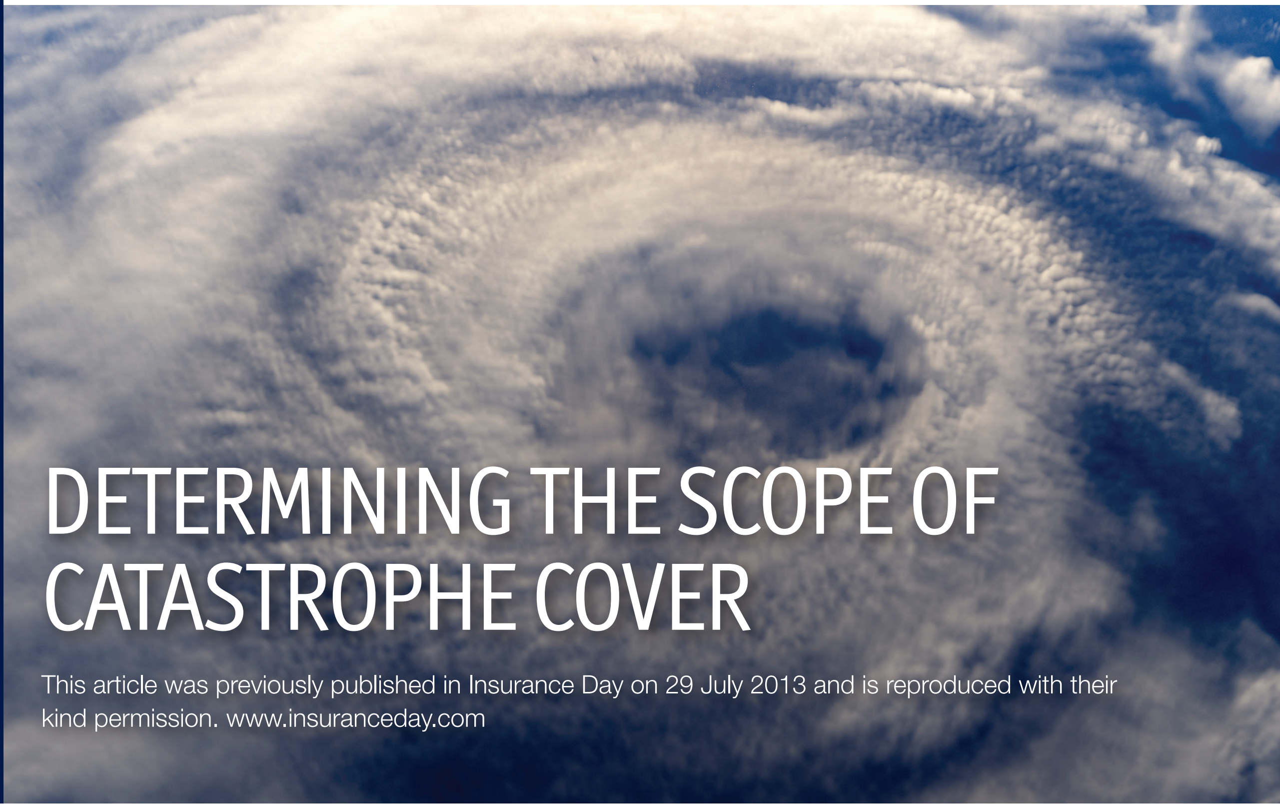

DETERMINING THE SCOPE OF CATASTROPHE COVER

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The devastating and widespread impact of the windstorms and flood events which affected Central Europe earlier this Summer resulted in estimated insured losses of US$5 billion and total economic losses of US$22 billion. They serve as a timely reminder that extreme weather events are no longer the sole preserve of so called "Nat Cat" hot spots or the US hurricane season, but can strike closer to home often with devastating results.

The impact of the windstorms and resultant flooding was keenly felt by businesses in the affected areas with widespread evacuations, property damage and infrastructure closures. Such events have the potential to generate significant claims and the insurance/reinsurance industry will likely face complex factual and legal issues to deal with them. Some of those issues are considered below.

As regards property damage caused by the flooding, questions may arise as to whether the event triggered cover. Was the damage caused by the floods or by wind-driven water? Are such causes covered or excluded? Even if damage caused by "flood" is covered, there are varying definitions of the term so depending on the wording of your policy the scope for cover for flood damage may vary significantly.

The events themselves took place over a period of time which may result in questions such as whether there was one or multiple events or occurrences and how the loss should be allocated between them. Notwithstanding the presence of "hours clauses" in policies, it can often be difficult to break down periods of sustained heavy weather (and the inter-relationship between different sequential weather patterns) into different "events" or "occurrences" to allocate and aggregate losses and apply deductibles and policy limits. Synoptic analysis may be employed as a part of this exercise.

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Significant weather events are likely to result in business interruption losses. In addition to whether the cause of damage can be established, other issues may include the nature and length of the interruption period, the presence and application of sub-limits and the operation of the adjustment clause. Further complex issues may arise if there are claims for contingent business interruption where policyholders have suffered losses as a result of an interruption to their supply or customer chain.

It is not uncommon following such weather events for there to be a formal inquiry into, for example, the extent to which they could have been avoided and how such losses could be mitigated in the future. Businesses and public authorities may be left exposed to liability claims depending upon the adequacy and professionalism of their risk management systems, their preparation prior to the event and their disaster management during and following it.

In the reinsurance context, there may be aggregation issues. The definition of a "loss occurrence" in hours clauses will be relevant, as will how cedants' aggregations can be verified and if they fall within the aggregation language of the corresponding reinsurance contracts. The specific wording and application of follow the settlements or follow the fortunes clauses will need to be considered, as will Claims Control Clauses especially if they allow reinsurers to deny claims if the insurer concludes a settlement without reinsurers involvement or authority and depending on the specific wording of the clause. Issues can also arise where the reinsurance cover is not "back to back". For example, if the law of the insurance and reinsurance are different important terms may be defined differently in the two policies which may result in an insurer being liable for a claim but unable to recover from its reinsurers. Payments on account and how they should be managed will also need to be considered, especially if there is a reinsurance programme with multiple layers and potentially non-aligned interests.

The windstorm and flooding events in Central Europe this Summer is a timely reminder of the importance of fully evaluating potential exposures to natural catastrophes and ensuring policies are sufficiently clear in their scope of cover so that policyholders know the cover meets their business needs and underwriters can determine precisely the potential scope of cover they are providing.

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