

Likely impact of coastal storm surges on insurance policies

By [Mtho Maphumulo](#)

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The news that dominated the headlines this past weekend, 15 - 17 September 2023, was the storm surge incidents that swept across three coastal provinces - the Western Cape, Eastern Cape, and KwaZulu-Natal. Mainstream media and social media alike were abuzz with the news. Since then, videos depicting the storm surges have been circulating across various media platforms.



Image source: GEORGE DESIPRIS from [Pexels](#)

As expected, there was a lot of severe damage caused in the process. The damage caused includes, inter alia, destruction to infrastructure, personal injuries, at least one death, disruption to harbours, particularly the smaller harbours and/or ports, damage to vehicles, homes, and buildings. Various possible causes of these storm surge incidents have been advanced to date; however, this falls beyond the scope of this piece.

The above-mentioned destruction and damage are undoubtedly of great concern to the affected policyholders, insurers, and reinsurers alike. Thus, it is worth paying closer attention to the policies that are likely to be activated by the said destruction; possible legal predicaments that are likely to transpire; and, lastly, practical ways in which the affected policyholders can make the process less daunting and taxing.

The damage caused by the storm surges do mirror the kind of damage that was seen during the 2022 Durban floods, albeit to a much lesser extent. The following policies are the most likely to be triggered:

- Home, household contents, and building insurance policies
- Business interruption policies
- Office/business furniture policies
- Business stock insurance policies
- Personal injury claims
- Funeral policies
- Life policies
- Car insurance policies



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Insurance claiming process is not always seamless. Disputes of different kinds are quite common. Whilst it is not possible to pre-empt what may be the root cause of disputes, there are certain common causes of disputes that feature predominantly in insurance claims. These include, inter alia, the following:

- **Non-disclosure and misrepresentation** – where a business has failed to disclose certain information or has misrepresented certain information, a claim may be repudiated on that basis. Non-disclosure and/or misrepresentation entitles an insurer to avoid a claim. An insurer will, however, need to demonstrate that the information that was not disclosed or that was misrepresented was material. The legal test for materiality will then be applied, consequently.
- **Fraud** – an allegation of a fraudulent claim is more serious than non-disclosure and misrepresentation, and thus, has more severe ramifications. It introduces a criminal element. In this instance, an insurer is entitled to declare policy *void ab initio* (invalid from instance). Thus, any policy benefits that may have been enjoyed by a policyholder, during the subsistence of a policy, will need to be paid back.
- **Non-compliance with contractual conditions** – many claims do get repudiated on the basis of failure to adhere to certain policy conditions.
- **Exclusion clause** – it is not uncommon for policyholders to be under the impression that they enjoy certain benefits in terms of the policy, only to be advised, at the claiming stage, that their policies specifically exclude certain risks and thus no benefits.
- **Act of God** – in cases that involve “natural disasters” (including a storm surge), it is possible for insurers to repudiate a claim/s by arguing that the cause of damage is an act of God.
- **Failure to prove ownership** – this predicament is prevalent in home/household contents insurance claims.
- **Disputes over unsatisfactory payouts/assessment of claims** – it does happen at times that a claim is not rejected; however, a policyholder is not satisfied with the way that the assessment of the claim has been made.

Whether any of these arguments succeed is a matter of fact - depending on the facts and circumstances of the case.

The claiming process can be taxing but there are ways to make it slightly less painful. Mainly, where possible, policyholders should make use of their own brokers. In this regard, policyholders are encouraged to ensure that their discussions with

brokers are confirmed in writing. This is critical as there may be instances where the broker may be sued – for breach of statutory duties and/or breach of common law duty of care.

Policyholders may also liaise directly with their insurers. In such a case, they should request a recording or record of advice relating to their communication with their insurers and keep same in a secure place. In their communication with insurers, policyholders must be honest at all times. They should also provide all the necessary information and documentation that is requested by their insurer.

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