

HOSPITALITYLAWYER.COM PRESENTS:

**THE HOSPITALITY LAW
CONFERENCE**

FOCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS

FEBRUARY 10th - 12th, 2014

A HOW-TO GUIDE FOR THE HOSPITALITY INDUSTRY

John E. Heintz, Dickstein Shapiro

Jacob Parsons, The Claro Group

Jared Zola, Dickstein Shapiro

PRESENTERS

John E. Heintz – Partner, Dickstein Shapiro



- more than 30 years of experience in corporate insurance coverage and complex litigation
- 2012 edition of Legal 500 recognized Mr. Heintz as a “leading lawyer”
- 2011 Chambers USA ranked Mr. Heintz as one of the top 12 leading insurance coverage attorneys

Jacob Parsons – Director, The Claro Group



- part of the firm’s Disputes, Claims and Investigations practice
- specializes in quantifying & understanding complex financial and economic issues
- extensive experience helping policyholders to prepare, present and successfully resolve major claims.

Jared Zola – Partner, Dickstein Shapiro



- Northeast Regional leader
- leads the group’s Property & Business Interruption Practice
- 2013 *Chambers USA: America’s Leading Lawyers for Business* ranked him in the “Policyholder: New York” category

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A HOW-TO GUIDE FOR THE HOSPITALITY INDUSTRY

Maximizing Insurance Proceeds for a Large-Scale First-Party Loss

OVERVIEW

- Introduction
- Hypothetical Loss Scenario
- Initial Steps
- Insured Obligations
- Potential Coverage Issues
- Common Mistakes to Avoid
- Roadmap to Successful Claim Resolution
- Questions

LARGE-SCALE LOSSES

GABLE
THE GLOBE AND MAIL
Toronto
CANADA



Cartoonists International: www.rvstyn.com/cartoons

HYPOTHETICAL LOSS SCENARIO

- **Acme Hospitality is a full service Real Estate company that owns hotels in Florida, Louisiana and Texas.**
- **On August 1, 2014, Hurricane Barth made landfall along the Texas Gulf Coast causing widespread damage throughout the region.**
- **Acme has two properties that were impacted by Hurricane Barth in different ways...**

HYPOTHETICAL LOSS SCENARIO

- **Seaside Hotel, Galveston**
 - **Acme closed this property in advance of Barth, pursuant to mandatory evacuation orders by City Manager.**
 - **Hotel suffered catastrophic structural damage and was deemed a total loss.**
 - **Acme plans to rebuild the hotel with a larger ballroom and 15% more rooms.**
 - **Restoration is expected to take 12 -15 months.**

HYPOTHETICAL LOSS SCENARIO

■ Inland Hotel, Houston

- Sustained minimal property damage (missing shingles and loose gutters), but was without grid supplied power for 10 days.
- Hotel remained open and sold out for 3 days immediately following Barth, but was forced to close for the next 7 days after fuel for the generator became unavailable in the region.
- The nearby MLS stadium suffered major roof damage and is expected to be closed for 6 months. Inland typically sells out for every Dynamo home game.

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WHAT STEPS SHOULD ACME TAKE IMMEDIATELY FOLLOWING THE LOSS?

STEP 1 – ASSEMBLE A CLAIMS TEAM

- **Acme should assemble a cross-functional team comprised of internal and external resources, to assist with the evaluation, analysis and preparation of its claim.**
- **Team lead should be a senior member of the organization who is committed to championing the claim to resolution.**

STEP 1 – ASSEMBLE A CLAIMS TEAM

■ Supporting team resources may include the following:

■ Internal

- Risk & Insurance
- Construction & Development
- Operations
- Finance & Accounting
- In-House Counsel

■ External

- Broker
- Forensic Accountant
- Coverage Counsel
- Engineering/
Construction Consultants



STEP 2 – REVIEW POLICIES TO DETERMINE IF LOSS IS COVERED

- Potentially applicable coverages may include:

Coverage	Seaside Hotel	Inland Hotel
Property Damage	✓	?
Business Interruption	✓	✗
Service Interruption	✓	✓
Civil Authority	✓	✗
Ingress/Egress	✓	✗
Extra Expense	✓	✓
Contingent BI/Dependent Prop.	✓	✓
Event Cancellation	✓	?

STEP 2 – REVIEW POLICIES TO DETERMINE IF LOSS IS COVERED

■ Limits & Sublimits

- Real Property
- Personal Property
- Equipment Breakdown
- Loss of Business Income
- Extra Expense
- Named Storm or Wind
- Flood
- Earth Movement
- Demolition
- Debris Removal
- Employee payroll
- Professional Fees
- Errors & Omissions
- Etc...

STEP 2 – REVIEW POLICIES TO DETERMINE IF LOSS IS COVERED

■ Deductibles & Waiting Periods

- Fixed \$ amount
- % of TIV (separate for PD and BI or combined?)
- % of TIV with a min or max
- # of days or hours

■ Exclusions

- Coverage bars

STEP 3 – PROVIDE NOTICE

- **Acme should provide notice of the loss to all potentially affected carriers as prescribed in their policy(ies).**
- **Policies typically require notice to be:**
 - **Timely - “immediate”, “as soon as practicable” or “as soon as possible”; and**
 - **In writing**
 - **Some states require prejudice for insurer to avoid coverage for late notice**

STEP 3 – PROVIDE NOTICE

- **If broker is handling notice, Acme should ask to be copied on the notice tender and all other correspondence relating to the claim**
 - **Follow up with broker and/or carrier(s) if notice has not been acknowledged within 48 hours.**
- **Calendar deadline for filing proof of loss**

WHAT ARE ACME'S DUTIES BEYOND PROVIDING NOTICE?

- Take all reasonable steps to protect the property from further damage
- Furnish list of all lost, damaged or destroyed property
- Permit adjuster to inspect the damaged property and take samples for inspection, testing and analysis
- Produce for inspection and copying, all of your books of account, business records, bills and invoices

WHAT ARE ACME'S DUTIES BEYOND PROVIDING NOTICE?

- **Submit to examinations under oath**
- **Abide by contractual limitation periods**
- **File a signed, sworn, Proof of Loss within time period, as extended**
- **Cooperate with the investigation and adjustment of loss**

WHAT ARE SOME COVERAGE ISSUES THAT ACME POTENTIALLY FACES IN THE LOSS ADJUSTMENT PROCESS?

■ Seaside Hotel

- Discrepancy between scheduled property value and actual restoration cost
- Distinguishing replacement cost from the incremental cost of betterments
- Impact of betterments on the period of restoration, extended period of restoration and related business interruption losses
- Coverage for extra expenses (i.e. training new staff)
- Business interruption make-up at other locations
- Impact of event on local economy
- Impact of hotel performance prior to loss or claim
- Ramp-up to “reopening”

WHAT ARE SOME COVERAGE ISSUES THAT ACME POTENTIALLY FACES IN THE LOSS ADJUSTMENT PROCESS?

■ Inland Hotel

- Loss potentially subject to high deductible for Wind or Named Storm
- Burden to demonstrate that service interruption and stadium damage were caused by an insured peril
- Extraordinary “gains” over first 3 days may offset a portion of the losses experienced over the following 7 days
- Lengthy and uncertain period of restoration

WHAT ARE SOME COMMON MISTAKES THAT ACME SHOULD STRIVE TO AVOID?

- Underinsured
- Late notice
- Disjointed commutations with adjuster
- Premature estimates of loss
- Unrealistic expectations -- confuse the actual loss with the covered loss
- Passively allow the Adjuster's team to quantify the loss
- Missed deadlines

ROADMAP TO SUCCESSFUL CLAIM RESOLUTION

- **Timely and Strategic Communication**
 - Team lead should control all communication with the carriers
 - Keep the carriers apprised of your plans and seek input or buy-in on major decisions
 - Be cognizant that every email, memo, analysis could be viewed by the carriers in a litigation context

ROADMAP TO SUCCESSFUL CLAIM RESOLUTION

- **Be Proactive About Managing the Claim Process**
 - Do not rely on the insurance company's adjuster to look out for your best interests
 - Establish early on that you are carefully and fully preparing a fair, credible claim for all losses to which you may be entitled under relevant policies
 - Implement critical path milestones to keep things moving forward

ROADMAP TO SUCCESSFUL CLAIM RESOLUTION

- **Fully and fairly respond to carrier requests**
 - Deal with carriers in good faith and respond to all reasonable requests in a timely manner
 - Propose alternatives (i.e. sampling approach) if requests are overly burdensome
 - Push back if demands are irrelevant to your claim
 - Consider using a web-based file share site to communicate and organize claim and claim support documentation

ROADMAP TO SUCCESSFUL CLAIM RESOLUTION

- **Prepare and periodically submit claim summaries and support packages**
 - **Prepare a preliminary estimate of loss as soon as practicable so that carrier can consider this information when they set a claim reserve**
 - **Periodically update claim estimate; distinguish incurred costs and realized losses from estimated future costs/losses**
 - **Submit claims in well-organized and supported packages**

ROADMAP TO SUCCESSFUL CLAIM RESOLUTION

- **Demand payment for undisputed elements of claim**
 - Identify and document hard costs - low hanging fruit
 - Interim payments should be requested once sufficient claim dollars documented excess of applicable deductibles
- **Document loss as you go**
 - Obtain written confirmation of significant decisions from carrier

ROADMAP TO SUCCESSFUL CLAIM RESOLUTION

- **Be prepared for settlement negotiations**
 - **Develop internal analysis of claim value and establish a target settlement range**
 - **Set internal expectations on strengths and weaknesses of claim**
 - **Anticipate challenges and be prepared to offer solutions**
 - **Consider all relevant factors, not just coverage, legal, technical, but also relationships, market factors, renewal, etc.**

ROADMAP TO SUCCESSFUL CLAIM RESOLUTION

- **Conduct Negotiations on Principal-to-Principal Basis With True “Decision Makers” present from all Parties**
 - Cuts through the usual “filtering” done by both sides’ advocates
 - Important that claim is mature enough before such meeting takes place
- **Be Flexible**
 - In any complex claim, there are inevitably new, unexpected issues that arise or your perspective on things changes as more information about claim is developed
 - Be prepared to walk away and come back to table at later time

QUESTIONS

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