

# **The 2009 Hospitality Law Conference**

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## **The Claims Process**

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## **THE CLAIMS PROCESS**

### **A Property Claim Requires a Team**

- Identify Key Issues
- Outline and Execute a Strategy and Agenda
- Manage Expectations
- Work Toward Settlement

### **Prior to Loss**

- Centralize Loss Claim Management with Insured Organization
- Negotiate Policy Terms Through Broker
- Designate an Independent Adjuster
- Locate Experienced Coverage Counsel
- Locate an Experienced Business Interruption Expert
- Locate a Remediation Partner

### **Claim Management by the Insured**

- The Insured's Role is Most Important
  - Point of contact for broker, carrier, counsel, hotel property employees and adjuster
- The Claim is Centralized Within the Insured Organization
  - Streamlined communication with Executive Branch, decision makers
  - Instills confidence in adjusters and insurers
- The Insured Prepares for a Loss Before it Occurs
  - Onsite Training/Preparation
  - Safety Program/Meetings
  - Efficient reporting lines/processes/paperwork
  - Effective communication/chain of command
- The Insured Selects and Directs Team
  - Empowers all team members
  - Has decision making authority
- The Insured Facilitates Communication Among the Team and With the Insurer
  - Reporting lines
  - Chain of command
  - Effective communicator
- The Insured Develops and Manages Expectations Among all Parties

### **Benefit of an Experienced Broker**

- Pays Attention to the Insured's Business Requirements
- Assists in Communication with the Insurer
- Facilitates Cooperation Among the Insurer, Insured, and Adjuster
- Provides a Focal Point for Keeping the Insurer and Adjuster Informed
- Instrumental in Assisting the Parties to Move Towards Reasonable Resolution and Settlement

### **Benefits of a Designated Independent Adjuster**

- Knowledgeable About the Insured's Business
- Becomes Part of the Team
- Provides Reporting Oversight and Auditing of Costs
- Assists in Managing Reasonable Outcomes
- Helps Overcome Hurdles in the Adjustment Process

### **Benefits of Coverage Counsel**

- Assists Client in Identifying and Executing Agenda and Strategy
- Identifies Coverage Issues and Appropriate Responses
- Familiarity with the Client's Business and Operations
- Assists in Assembling and Managing Experts
- Aids in Managing Client Expectations
- Can Work with the Broker as a Complimentary Channel of Communication with the Insurer
- Should View Litigation as Last, Not First Option

### **Benefit of a Business Interruption Expert**

- Assists in the Claim Process and Preparation of the Claim
- Provides Useful Advice, Expertise, and Manpower
- Provides the Insurer with a Tangible Work Product
- Provides for Both Parties Detailed Calculations and Supporting Information
- Will Provide a Rebuttal Analysis and Assist in Counter-Proposals

### **Benefit of Remediation Contractor**

- Potential for Contractor Approved by Insurer
- Ability to Quickly Respond to Loss
- Potential for Agreement Limiting Contractor Recovery to Insurance Proceeds

### **Key Issues in All Claims: What You Need in Your Policy**

- "All Risk" Manuscript Policy
- Appropriate Deductible Language
- Limited Exclusions Tailored to Business Operations with "Ensuing Loss" Provision
- Broad Replacement Cost Coverage
- Ordinance and/or Increased Cost of Construction Coverage

### **Key Issues in Large Losses: What You Need in Your Policy**

- Extended Period of Indemnity for Business Interruption Losses
- Designated Adjuster
- Coverage for Loss Adjustment Expenses, Including Attorney's Fees
- Stand-Alone Collapse Coverage: Eliminate Requirement that All or Part of Building Must Have "Fallen Down or Caved In"
- Broad Suit Limitation Clause and Notice Provision