

Insurance for Business Interruption Losses Due To Damage Away from the Insured Premises

Lessons from 9/11 and Katrina, and Coverage for the Icelandic Volcanic Eruptions and the Gulf Oil Spill



Presenters



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- An experienced commercial litigator who applies his complex analysis skills with extensive experience in insurance coverage analysis, litigation and dispute resolution.
- Focuses on property insurance, commercial general liability insurance, captive insurance and reinsurance issues.
- Assists clients in recovering business interruption insurance coverage and damages arising out of prominent catastrophes.



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- AKA "B.I. Bob"
- Mr. Glasser assists insured businesses including hotels, prepare and substantiate business interruption and property damage.
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Disclaimer

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Overview

- The Evolution of Property Damage and Time Element Insurance Coverages
- The Traditional Requirement of "Direct Physical Loss or Damage" to Insured Property
- How Time Element Losses Are Calculated and Adjusted
- Lessons Learned from 9/11, Katrina and other Recent CAT Losses
- Ideas for Protecting Against Future Losses

Evolution of "BI" Insurance

- Stage 1 Property Damage / ACV
- Stage 2 Replacement Cost
- Stage 3 Business Interruption Caused by Damage to Your Property
- Stage 4 Bells and Whistles (examples):
 - Ordinance or Law Coverage
 - Business Interruption Caused by Damage to Others' Property
 - Business Interruption Caused by Something other than Direct Property Damage

"Direct Physical Loss or Damage"

- Traditional way to tie your BI claim to the trigger,
 - But not the only way
- Many significant Business Interruption risks are triggered by damage away from your property:
 - Loss at attraction property (Disney World / Convention Center)
 - Loss at customer's property (convention host)
 - Service Interruption
 - Ingress / Egress
- Many other risks may not involve "direct physical loss or damage" but nevertheless can be insured:
 - Disruption of air travel as precaution against potential terrorism
 - Disruption of air travel due to volcanic ash
 - Disruption of air or land travel due to grid failure
 - Disruption of travel due to cyber-attack

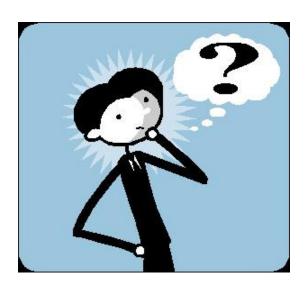
Measuring a Time Element Loss

- Future revenues and profits are inherently unpredictable. You
 must consider the earnings of the business before the date of
 damage and the probable earnings thereafter, had no loss
 occurred.
- Attributing business interruption income loss to direct physical damage.
- Ordinary course of business forecasts
- Trending historical results, budgets, etc.
- Period of indemnity performance and demonstrating necessity of continuing expense
- Market/economic conditions
- Comparables
- "Make-up" and other offsets



Typical Grey Areas in Measuring a BI Loss

- Pro forma sales / projected revenue growth & expenses had no loss occurred (commonly expressed as "But For" the loss)
- Attributing lost business income to direct/in-direct physical damage
- Indemnity Period and Extended Period of Indemnity
- Continuing v. non-continuing expenses
- Make up sales / production vs.
 improved trending and seasonality
- Loss mitigation opportunities and Measurement



Lessons Learned

- Disputes regarding the "Wider Effects" of the Catastrophe
- Disputes regarding the "Period of Recovery"
- Disputes regarding "Anti-Concurrent Causation" clauses
- The Hidden "Daubert" Exclusion

Best Practices (Part I)

- Request on site visit by adjuster ASAP and then assume responsibility of measuring your own claim with your contractors, engineers, etc.
- Concentrate on operations and mitigation efforts; form a "Claim Preparation Strategy" and help prepare support for an interim cash advance
- Agree with adjuster to giving insured authority to spend to mitigate loss and incur extra expenses without his item by item approval
- Utilize extra expense coverage for security, power, expediting, payroll, distribution alternatives, advertising, etc.
- Review insurance policy with Insured and Broker
- Those who anticipate what could happen, and thoroughly plan for it, stand a much better chance of a full and prompt recovery.

Best Practices (Part II)

- Do not lose sight of the fact that an insurance claim is a cooperative and adversarial process at the same time
- Segregate factual issues from judgment issues
- Take initiative Your team prepares your claim not the insurer and be prepared to support your position
- Consider viewpoint of insurer "Devil's
 Advocate" while at the same time understand
 the strengths & weaknesses of your claim (have
 reasonable expectations)
- Prevent adversarial situations throughout the process; resolve differences item by item; resist time pressures
- Be cautious of signing a general release as a condition of settlement. You are entitled to collect your loss payment by filing an agreed proof of loss



Ideas for Protecting Your Properties

BEFORE THE LOSS:

Assemble the Right Team

Risk Manager

Operations Mgmt.

Financial Mgmt.

Named Adjuster



Insurance Broker

Forensic Accountant

Coverage Counsel

Engineer/Construction

- Create and Pursue Your Dream Coverage
 - Traditional triggers and non-PD triggers

Ideas for Protecting Your Properties

AFTER THE LOSS

- Give Notice of the Loss
- Activate the Claims Team
 - All of the above, plus Public Adjuster and Lawyer
- Track claim costs / maintain documentation
- Keep insurance company representatives updated
- Know Your Policy and pursue all triggered coverages
- Delegate to specialists where appropriate
 - Claim adjustment expenses usually are covered
- Respond promptly to reasonable requests for information
- Remain aware of deadlines:
 - Proof of Loss
 - Suit Limitation Provisions
- More on Next Slide

Ideas for Protecting Your Properties

AFTER THE LOSS (continued)

Don't Take "No" for an Answer



THANK YOU!

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