

HOSPITALITYLAWYER.COM PRESENTS

2013 THE **HOSPITALITY LAW**
CONFERENCE
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THE ART OF THE PROPERTY CLAIM NEGOTIATION

An Insider's
Perspective

INTRODUCTION



- **Clark Schweers, Managing Director, BDO USA, LLP**
- Leads firm's Insurance Claim Services practice with 15 yrs. experience advising clients on complex property and business interruption claims for insured businesses
- Extensive international experience, having led engagements encompassing more than \$1B in recoveries
- Led team of 130+ professionals in reviewing thousands of claims as related to BDO's Independent Examination of the Gulf Coast Claims Facility



- **Marshall Gilinsky, Shareholder, Anderson Kill & Olick, P.C.**
- Experienced commercial litigator with extensive experience in insurance coverage analysis and litigation and dispute resolution.
- Specializes in property, commercial general liability, D&O, and captive insurance issues
- Assists clients in recovering business interruption insurance coverage and damages arising out of prominent catastrophes



- **Philip M. Colicchio, Partner, Taylor, Colicchio & Silverman**
- Leads Commercial Law and Hospitality Practice Groups
- Specializes in national and international restaurant and hospitality development and consulting, as well as private REIT investment
- Speaks regularly on restaurant development, negotiation of licensing and management agreements between chefs/restaurateurs and mixed use real estate/hotel/casino owners

CASE STUDY: DEUCE HOTEL

- Luxury hotel located in downtown Manhattan
- 800 rooms
- 3rd party F&B contract with the “Hipster Hospitality Group”
- Deuce and Hipster were having a record year

- First floor lobby and all conference facilities below ground were flooded by contaminated water
- Anticipated reopening date is April 2, 2013



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

ISSUES ARISING IN SANDY CLAIMS

- Flood coverage or no flood coverage?
- Competing sublimits – flood, storm surge, named storm?
- Do flood sublimits impose a cap on business interruption losses?
- Service Interruption coverage – do flood exclusions apply? (AKA, why did the power go out?)
- Wind vs. water



SMOOTH SAILING

- Open lines of communication
- Proper preparation prevents poor performance
- Create an estimate of loss EARLY
- One point of contact – establish a protocol for transfer of documentation
- Utilize technology
- Don't let distractions get you off track

SMOOTH SAILING (CONT'D)

- Apples vs. oranges comparisons are not helpful
- Identify hard costs- low hanging fruit
- Create a timeline
- Cash is good
- Written confirmation of significant decisions
- Utilize business relationships when necessary
- Prior to settlement day, set internal expectations on strengths and weaknesses of claim



SETTLEMENT DAY

- Always share list of attendees in advance
- Perform meeting in person
- Have breakout rooms available
- Carriers want to hear from policyholder
- Parties should have decisions makers with settlement authority in attendance
- Avoid introducing new parties for first time

SETTLEMENT DAY (CONT'D)

- Avoid surprises
- Lunch break is good!
- Recognize each side's hot button
- Check your emotions at the door
- Recognize the business relationship that exists between the parties (win-win)

