

HOSPITALITYLAWYER.COM PRESENTS

2013 THE **HOSPITALITY LAW**
CONFERENCE
FOCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS

FEBRUARY 11-13, 2013 • HOUSTON, TEXAS

HOSPITALITY BUSINESS INTERRUPTION – BEYOND THE BASICS

PRESENTERS



Reecie Crotts

- Associate Director in the Houston office of Navigant Consulting.
- Experience in insurance claims, litigation support and consulting experience within a wide variety of industries including: energy, natural gas liquid, manufacturing, retail and hospitality.
- Certified Public Accountant.



Roger Hillman

- An owner in Garvey Schubert Barer and chair of the litigation practice in its Seattle office
- Served as senior vice president of claims for national insurance carriers for twelve years
- Leads his firms' practice in liability defense and insurance coverage litigation

BUSINESS INTERRUPTION

- Why do we hear so much about it and why is it such a difficult subject?

BUSINESS INTERRUPTION VALUATION

■ Presentation Methods:

- Top Down
- Bottom Up
- Three Column

BUSINESS INTERRUPTION VALUATION

- Three basic frameworks for valuation projections:
 - Before and After
 - “But For”
 - Yardstick

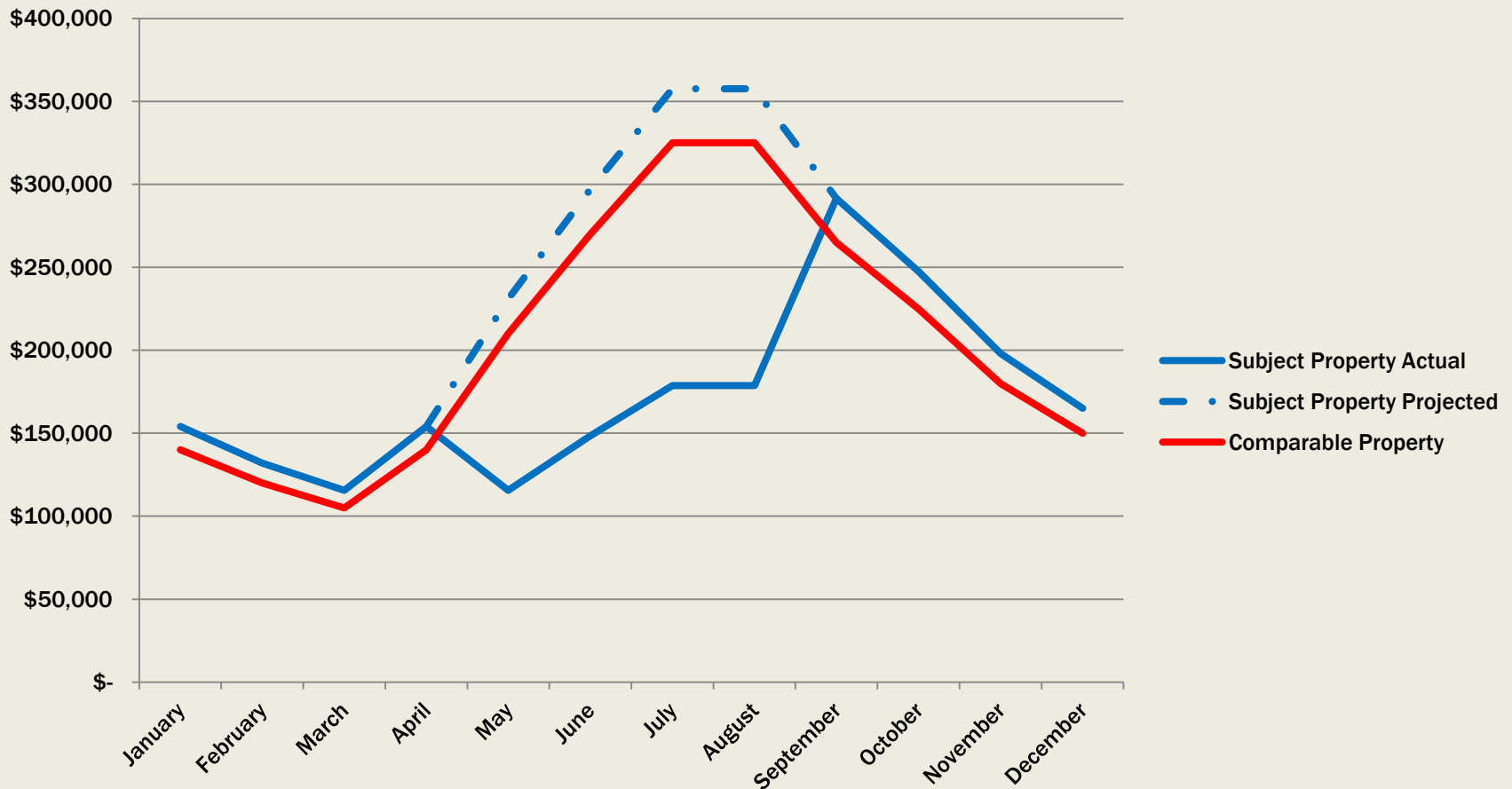
BEFORE AND AFTER



“BUT FOR”

- Trends
- Budgets/Forecasts
- Reservation Data Analysis

YARDSTICK



LOST REVENUE ISSUES

- Policy Wording
- Occupancy
- Price Reductions
- Multiple Income Streams
- Group Business

SAVED EXPENSE ISSUES

- Drivers
- True Loss (Projected vs. Actual)
 - Potential Extra Expense
- Step Variable Savings (Restaurant Example)
- Depreciation (Again!)
 - Potential Extra Expense 2.0

BUSINESS INTERRUPTION

- Physical Loss or Damage
- Described Premises
- Action of Civil Authority
- Loss of Income
 - Saved Expenses
 - Continuing Expenses
- Period of interruption/cessation and restoration

PHYSICAL LOSS OR DAMAGE TO DESCRIBED PREMISES

- Loss of rents to undamaged buildings not covered despite damage to adjacent building impact on “life style”. *Royal Indemnity v Mikob*
- Loss of airport parking revenue due to flight cancellations not covered. *Philadelphia Parking Authority v Federal Ins. Co.*
- Reduction of attendance at exposition due to snowstorm not covered. *National Children’s Exposition Corp. v Anchor Ins. Co.*

ACTION OF CIVIL AUTHORITY

- “Prohibits” access to premises
- Theater accessible despite curfew. *Syfufy Enterprises v Home Insurance Company*
- Loss of rentals due to grounding of flights by FAA following 9/11 not covered
 - May have prevented travelers from arriving but did not prohibit access. *730 Bienville Partners Ltd. v Assurance Co. of America*
 - Hotels themselves were accessible. *Southern Hospitality v Zurich America Insurance Company*

ACTION OF CIVIL AUTHORITY

- Loss of restaurant income resulting from Hurricane Floyd evacuation order covered. *Assurance Co. of Am. v BBB Serv. Co.*
- Bowling alley losses due to order closing all places of amusement due to rioting covered. *Southlanes Bowl, Inc. v Lumbermen's Mutual Ins. Co.*
- **Distinction**-Impacted business ordered closed rather than access being prevented

LOSS OF INCOME

- Replace income which would have earned “but for” covered event
- Do for business what business itself would have done if no interruption had occurred. *American Alliance Ins. Co. v Keleket X-Ray Corp*; *National Union Fire Ins. Co. v Anderson-Prichard Oil Corp*.
- Net of saved expenses
 - Cost of merchandise, cost of preparation and sales. *Fireman’s Fund Insurance Company v Mitchell-Peterson, Inc*.

LOSS OF INCOME

- Previous experience and probable future experience must be considered. Business was doomed before event, losses for prior two years. *Berkeley Inn, Inc. v Centennial Ins. Co.*
- Not speculative. *Prudential LMI Commercial Ins. Co. v Colleton Enterprises, Inc.*
- Reasonable certainty. Documentation not specified in policy, e.g. P&L's, tax returns, payroll records. *LA Louisiane Bakery, Ltd. v Lafayette Insurance Company*
- Historical figures. *Catlin Syndicate v Imperial Palace*

CONTINUING EXPENSES

- Continuation of normal expenses to insure same quality of service as before the loss. However, key personnel salaries must actually be paid. *A&S Corporation v Centennial Insurance Company*
- Depreciation is not a continuing expense when building destroyed. *Grevas v USF&G Co.*
- Banking charges, rent, advertising, insurance. *LA Louisiane Bakery Company v Lafayette Insurance Company*

MULTIPLE INCOME STREAMS

- Loss of restaurant revenue covered but not loss of rental income due to unavailability of restaurant due to fire. *Hotel Properties Ltd. v Heritage Insurance Company of America; Ramada Inn Ramogreen, Inc. v Travelers Indemnity Co. of America*
- Loss of income from undamaged golf course not covered despite fire destruction of pro shop and restaurant. *Gregory v Continental Insurance Co.*
- Loss of rentals resulting from lack of access to marina and waterfront not covered. *Royal Indemnity v Mikob*

PERIOD OF INTERRUPTION/RESTORATION

- Period of time required with due diligence and dispatch to rebuild, repair, replace described property. *Beautytuft, Inc. v Factory Insurance Association*
- Time for inspection and compliance included. *Davidson Hotel Company v St. Paul Fire and Marine Ins. Co.*
- Permitting process included. *A&S Corporation v Centennial Insurance Company*
- Lost opportunity for advance bookings. *WV Realty, Inc. v Northern Ins. Co.*
- Don't be a hero. *Keetch v Mutual of Enumclaw Ins. Co.*