

# THE MOST FREQUENT CLAIMS BROUGHT AGAINST HOTELS AND HOW TO PREVENT THEM

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# Disclaimer

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# AGENDA

- Property Claims
- Property Insurance Coverage
- Business Interruption Coverage
- Guest Liability Claims
- General Liability Insurance Coverage
- Cyber Liability Claims
- Worker's Compensation Claims
- Tips on Insurance Claims



# PROPERTY CLAIMS, ISSUES AND INSURANCE



# HOTEL PROPERTY CLAIMS

## Most Common:

- Water Damage – General
- Water Damage – Sprinkler
- Hail
- Wind
- Fire



These five causes account for two-thirds of hotel property claims.



# PROPERTY INSURANCE COVERAGE



# FIRST-PARTY COVERAGE

- Insurance for damage to policyholder's own property
- Not for damages caused to property of others
- Business Interruption (also first-party loss)
- Types of First-Party Insurance Contracts
  - Named Perils Policies
  - All-Risks Policies
  - Boiler & Machinery Policies
  - Builder's Risk Policies





# TYPES OF PROPERTY AND RISKS THAT ARE COVERED

- Named Perils
- All Risk



# BUSINESS INTERRUPTION COVERAGE



# BUSINESS INTERRUPTION (BUSINESS INCOME) LOSSES

## Basic Coverage

The purpose of a basic business interruption coverage provision is to provide the policyholder with the income it would have earned had its business not been interrupted because of damage to property covered under the policy.



# WHERE DO YOU FIND YOUR BUSINESS INTERRUPTION COVERAGE

- Generally, this coverage can be found as part of Your First-Party Commercial Property Policy under the Business Income and Extra Expense Coverage Form.
- Review the declarations page for existence of coverage (i.e. is the property a covered location), limits, sublimits, and deductibles.
- Always consider the impact of exclusions or endorsements on business interruption coverage.



# BUSINESS INTERRUPTION LOSSES

## “STANDARD” BI

### Common Elements:

- Physical Damage (at an Insured Location)
- Causation
  - Results from covered peril and causes business income loss
- Necessary interruption or suspension of operations (Partial vs. Total Suspension)
- Period of Restoration
  - Extended BI



# SOME BUSINESS INTERRUPTION POLICY FORMS COVER SLOWDOWNS

- In recent years, the insurance market has responded to the need for coverage of a partial cessation or slowdown in business operations
  - A definition of the term “Suspension” has been added to the 1999 edition of the ISO form
  - Some Broker Manuscript Business Interruption forms now expressly address this issue



# TIPS

Policyholders experiencing a business interruption should:

- Review the terms of their policies
  - See whether their policy covers complete or partial interruptions
  - Ensure that they have other beneficial coverage, such as reimbursement for expenses associated with professional services needed to prepare a business interruption claim
- Document, document, document!



# GUEST LIABILITY CLAIMS





# HOTEL GUEST LIABILITY CLAIMS

## Most Common:

- Slips/Falls
- Exposure/Contact
- Struck by/Against



These three causes account for more than half of all hotel guest liability claims.

# DUTY OF CARE

- Duty of care is to provide premises safe from reasonably foreseeable hazards.
- Was it *reasonably foreseeable* that this accident would occur?
- Inspect regularly, ask for feedback on conditions at your hotel – from both guests *and* employees.



# REASONABLE FORESEEABILITY



# GENERAL LIABILITY INSURANCE COVERAGE



# GENERAL LIABILITY INSURANCE

- What does it do?
  - Protects owners and operators of businesses from a wide variety of liability exposures
  - Other policyholders may include municipalities, states, or any entities with a wide range of potential liabilities
  - Covers negligent acts or omissions
  - Pays on behalf of a policyholder for loss arising out of its liability to others
  - Always involves a third party



# WHAT'S TYPICALLY COVERED?

- Bodily Injury and Property Damage
- Personal and Advertising Injury
- Medical Payments



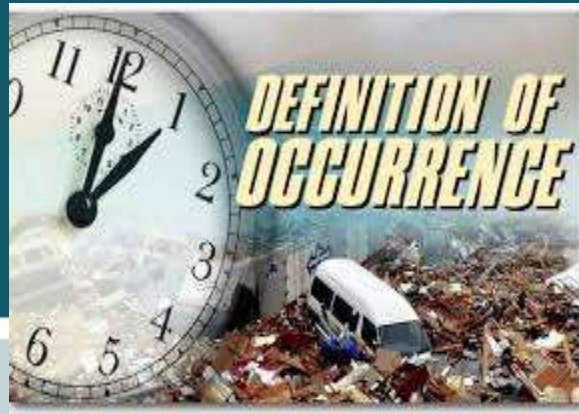
# LIMIT OF LIABILITY

- The amount for which an insurance company is liable under the policy.
- Typically paid “per occurrence” or “per claim” and subject to an “Aggregate Limit of Liability.”
- Defense costs are usually outside the limit of liability.



# OCCURRENCE

- An accident, including continuous or repeated exposure to substantially the same general harmful conditions; an act or related series of acts causing injury to persons or damage to property
- Need fortuity





# COMMON CGL POLICY CONDITIONS

- Notice
- Cooperation Clause:
  - Must cooperate with insurance company in the investigation, settlement or defense of a claim or suit
  - No duty after denial of coverage
  - Duty remains if defending under a reservation of rights
- Expected or Intended Injury exclusions
- Business Risk exclusions



# ADVERTISING INJURY

- Advertising injury means injury, other than bodily injury or personal injury, arising solely out of one or more of the following offenses committed in the course of advertising your goods, products or services:
  1. oral or written publication of advertising material that slanders or libels a person or organization;
  2. oral or written publication of advertising material that violates a person's right of privacy; or
  3. infringement of copyrighted titles, slogans or other advertising materials.
- Advertising means any paid: advertisement, publicity article, broadcast or telecast.



# PERSONAL INJURY

Personal injury means injury, other than bodily injury, arising out of one or more of the following offenses committed in the course of your business, other than your advertising:

1. false arrest, detention or imprisonment;
2. malicious prosecution;
3. the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person or persons occupy, by or on behalf of its owner, landlord or lessor;
4. oral or written publication of material that slanders or libels a person or organization;
5. oral or written publication of material that violates a person's right of privacy; or
6. discrimination (unless insurance thereof is prohibited by law).



# CYBER LIABILITY CLAIMS

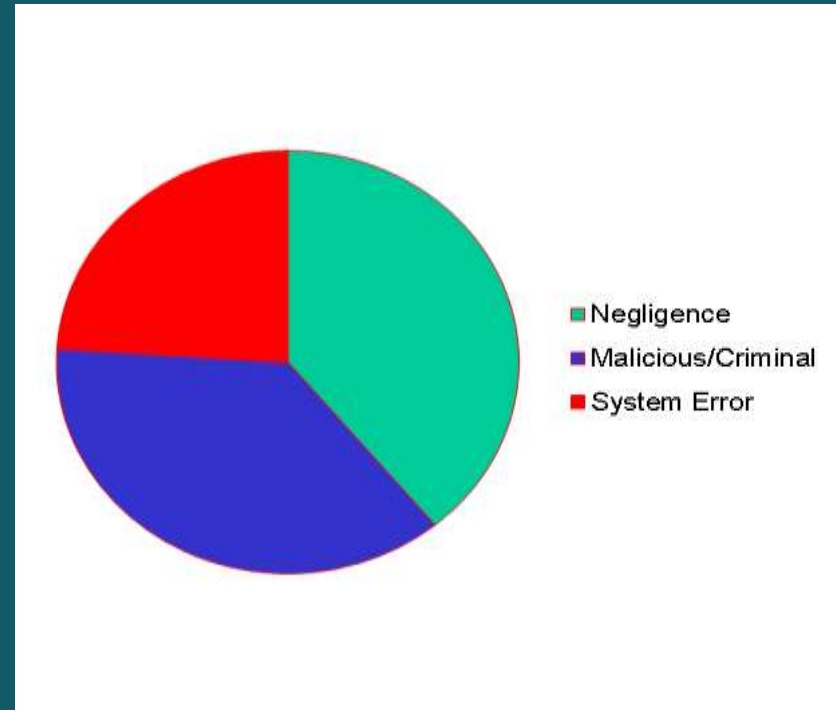




**DATA SECURITY BREACHES**

# WHAT ARE THE CAUSES?

- Negligence – 35%
- Malicious or Criminal Attack – 37%
- System Error – 29%<sup>1</sup>



<sup>1</sup>2013 Cost of Data Breach Study: Global Analysis, Ponemon Institute, May 2013.  
<http://www.ponemon.org/local/upload/file/2013%20Report%20GLOBAL%20CODB%20FINAL%205-2.pdf>

# WHAT'S THE COST?

AVERAGE RESOLUTION TIME:  
24 days



AVERAGE COST:  
\$5.4 Million<sup>3</sup>



<sup>3</sup>2013 Cost of Data Breach Study: Global Analysis, Ponemon Institute, June 2013.

[http://www.symantec.com/about/news/release/article.jsp?prid=20130605\\_01&om\\_ext\\_cid=biz\\_socmed\\_twitter\\_facebook\\_mar\\_ketwire\\_linkedin\\_2013Jun\\_worldwide\\_CostofaDataBreach](http://www.symantec.com/about/news/release/article.jsp?prid=20130605_01&om_ext_cid=biz_socmed_twitter_facebook_mar_ketwire_linkedin_2013Jun_worldwide_CostofaDataBreach)

# DEALING WITH A SECURITY BREACH

- Data Breach Team and Plan needs to be in place
- Compliance with State Notice
- Make sure your insurance provides coverage where cloud used
- Notice all potentially applicable insurance





# INSURANCE POLICIES THAT POTENTIALLY COVER CYBER CLAIMS

- Take Inventory of Policies
- GL, D&O, E&O, Crime, All Risk Property, Cyber Policies
- 1<sup>st</sup> Party, 3<sup>rd</sup> Party, Hybrid Coverage Issues



# EMPLOYEE WORKERS COMP CLAIMS



# WORKERS COMP CLAIMS

## Most Common:

- Struck by/Against an object
- Slips/Falls
- Manual Materials Handling



These three causes account for more than two-thirds of all workers comp claims.

# 10 TIPS FOR REDUCING WORKERS COMP CLAIMS

- Pre-employment checks/physicals
- Proper and Patient Training Programs
- 15 rooms per day; consider number of occupants
- Mattress lifters
- Cart loads
- Powered pole scrubbers
- Light vacuum cleaners
- Spray bottles
- Work shoes
- Return to work program

Source: Petra Risk Solutions



# WORKERS COMPENSATION INSURANCE

- Collateral Agreements
  - Side Agreements governing WC Collateral – LOC's and Cash
  - Increases in Collateral and Demand
  - “Default” Clauses
  - Arbitration Clauses



# WORKERS COMPENSATION INSURANCE

- Resolving Disputes
  - Come armed with independent reviews
  - Challenge arbitration agreements
  - Use the renewal process

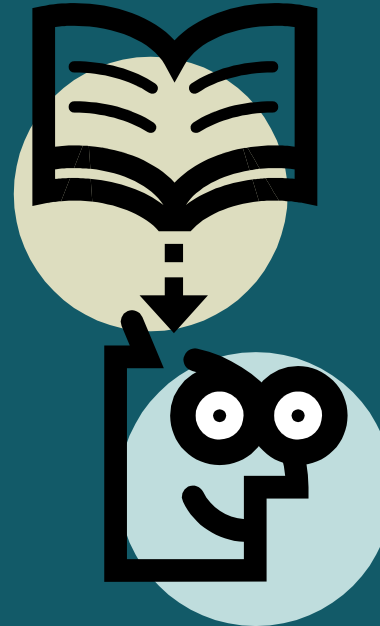


# TIPS ON INSURANCE CLAIMS



# TIP #1: THINK INSURANCE AFTER A LOSS OCCURS

- Look to insurance coverage following all lawsuits, claim letters, product-related issues, and financial losses





## TIP #2: GIVE NOTICE OF A CLAIM OR LOSS AS SOON AS POSSIBLE

- Claims made and reported v. occurrence
- Late Notice Rule: prejudice
- When you are faced with a claim or loss, notify the broker, the insurance company, or both

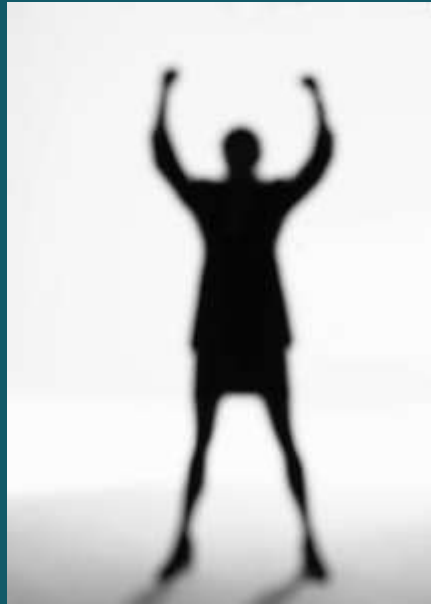


# TIP #3: FULFILL YOUR DUTY TO COOPERATE, WISELY

- The Policy may contain a “Duty to Cooperate” clause
  - investigation
  - defense
  - settlement
  - must you cooperate?



## TIP #4: WHEN YOU MAKE A CLAIM, DO NOT ACCEPT “NO” FOR AN ANSWER



- Challenge insurance company's denial of coverage
- Determination and persistence often mean the difference between coverage and no coverage

# TIP #5: BUY THE RIGHT INSURANCE PRODUCT

## *Buying Insurance Policies*

- Named Insured – make sure you have coverage for the entities you intend at claim time
- Exclusions (asbestos; professional services; intentional acts/fraud; contractual liability; pollution; punitive damages)
- Endorsements
- Dispute resolution provision; Choice of law
- Defense costs outside of policy limits?
- Misrepresentation in application -- rescission



# TIP #6: DEAL WITH THE RIGHT PEOPLE

## *Tips:*

- All communications about insurance in writing
- Responsible individual review
- Read the policy
- Use excellent brokers and consultants effectively



# TIP #7: DO NOT SLEEP THROUGH RENEWAL

- Renewals can be a surprise
- Beware of new or different endorsements
- Most jurisdictions require insurer to notify policyholder of any material reduction in coverage on renewal
- Notice to Additional Insureds of renewal or change in coverage



# TIP #8: CARRY A BIG STICK

- The Best Defense is a Good Offense
- Consider the relationships – legal, financial, political
- Cost and time of litigation
- Consider all sources of recovery?
  - Consequential damages
  - Breach of duty of good faith
  - Torts
  - Attorneys' Fees



# THANK YOU!



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