



BUSINESS INTERRUPTION INSURANCE -

Types of Coverage and How To Get Your
Claim Paid With A Minimum Of Time
And Expense

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BUSINESS INTERRUPTION INSURANCE— TYPES OF COVERAGE AND HOW TO GET YOUR CLAIM PAID WITH A MINIMUM OF TIME AND EXPENSE.

Whenever a disaster causes damage to business property, there is often an associated loss of income and extra expenses to the business for a period of time until the property is repaired or replaced. Property damage insurance does not protect the business owner from a loss of income or extra expenses incurred as a result of the property damage.

Insurance sold to business owners to cover these types of loss is referred to as business interruption insurance. The most common forms of business interruption insurance are business income, extra expense, contingent business interruption, dependent premises, civil authority, ingress/egress, and service interruption insurance. While there are wide variations in policy provisions, coverage and language, this report will generally examine the purpose for the different types of business interruption insurance commonly purchased and the best method to get your business income claim paid with a minimum of time and expense.

Business Income Coverage

Perhaps the most common form of business interruption insurance is business income coverage. Business income coverage seeks to replace the lost net profits and continuing normal operating expenses incurred as a result of the suspension of business due to a covered cause of loss. For example, if a hurricane rips the roof off of your place of business and you must close for a period of time to make repairs, business income coverage would reimburse you for your lost profits and continuing normal operating expenses, including payroll. Most policies require that the business must completely cease operations and the insurance only covers loss for the “period of restoration” – the time necessary to restore the business back to pre-loss capacity. Most often, disputes with this type of coverage center upon the correct methodology for the calculation of net profits, the reasonable period of restoration, and the expenses which constitute normal operating expenses as opposed to extra expenses incurred as a result of the loss.

Extra Expense Coverage

Similar to business income coverage, extra expense coverage pays for the reasonable and necessary expenses for you to get your business running again. Examples of these types of expenses could include: moving and hauling expenses, advertising, telephone and fax communications, temporary labor, consultants, and overtime for workers. This coverage is intended to cover those extra expenses needed to minimize the loss and restore the business to its pre-loss capacity as soon as possible.

Contingent Business Interruption Coverage

Contingent business interruption coverage replaces lost income due to the business interruption of a key supplier, customer or purchaser. For example, if a hurricane causes damage to the extent that a key supplier can not provide the supplies necessary for your business, you would have a contingent business interruption claim.

Dependent Premises Coverage

A type of contingent business interruption coverage is dependent premises coverage. This insurance covers losses incurred from damage to, or acts of, civil authorities that prohibit access to dependent business premises. Dependent business premises include contributing premises (businesses that deliver materials or services to you); recipient premises (business that accept your investigation and payment of your claim, product or service); manufacturing premises (businesses that manufacture products for delivery to you) and leader premises (businesses that attract customers to your business).

Civil Authority Coverage

Civil authority coverage protects net profits and extra expenses incurred if your business operations are suspended due to an order of the civil authority. For example, during Hurricane Ike, the Galveston civil

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authorities issued an order to evacuate the island. Therefore, if you purchased this coverage and operated a business that was affected as a result of the order, you would have a claim.

Ingress/Egress Coverage

Ingress and egress coverage provides insurance against loss of net profits and extra expenses incurred when ingress to or egress from the insured premises is prevented even if the insured property is not damaged. This type of insurance might apply when hurricane force winds and flooding damage an office building lobby and common areas preventing access to offices or when physical infrastructure (roads, bridges, rail tracks, etc.) are damaged preventing ingress and egress to insured premises.

Service Interruption Coverage

Service interruption coverage provides insurance against lost profits and extra expenses when services to an insured property are interrupted. These services can include electricity, gas, water, data, phone and/or sewer services. Thus, if the electricity to your store is interrupted for a period of time preventing you from operating your business, you have a service interruption claim.

How To Get Your Claim Paid

Business interruption claims are some of the most complex and challenging claims a policyholder will face. Typically, they take a long time to resolve because the full extent of the loss is usually not realized for some period of time. Therefore, it is important to assemble a team of professionals to assess coverage, quantify the loss, and resolve the claim.

The Policyholder’s Team

Depending upon the complexity of the loss, the policyholder’s team can be small or large. Small losses may only require the services of the in-house bookkeeper. On the other hand, large losses may require the policyholder to assemble an inter-disciplinary team that includes lawyers,

forensic engineers, forensic accountants and claim preparation experts such as public insurance adjusters. After deciding upon the complexity of the loss, the process of assessing coverage begins.

The Coverage Assessment Phase

Critical to the successful resolution of the claim is knowing the coverage provided by the applicable policies of insurance. The first step in this phase is to select competent coverage counsel. The chosen counsel should have experience in reading and understanding the complex language used in business interruption policies. Since business interruption policies vary among the carriers, it is important the counsel recognize the various contours of the coverage provided by the policyholder’s particular policies.

The second step in this phase is to collect all possible policies that may contain business interruption insurance coverage. If the policies themselves were lost or damaged as a result of the event, then the insured should request a true and correct copy of the policy from his broker or carrier.

Counsel should bear in mind that in addition to property and casualty policies, additional business interruption coverage may be found in package policies, inland marine coverage, boiler and machinery coverage, or other insurance policies. Even coverage under policies held by other parties should be investigated where the policyholder is named as an additional insured or where its property is in the control of third parties.

To be thorough, counsel should review all insuring agreements, coverage extensions, sub-limits and deductibles, exclusions and exceptions bearing on the loss. This review will alert the policyholder not only to the applicable insurance coverage for the loss, but also to its responsibilities during the claims process such as providing the carrier with prompt notice of the loss, filing a proof of loss, mitigation of the loss, and preservation of the insurance coverage for a loss.

For example, if a hurricane damages a building’s roof causing water damage to the interior of the building and in addition

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thereto, the building suffered water damage due to intrusion from wind driven rain (through cracks in the windows or walls of the building from an opening not created by the hurricane), insurance coverage for the entire loss could be excluded under the anti-concurrent causation clause, unless the policyholder can prove the amount of loss specifically caused by the covered peril – water intrusion through the roof as opposed to pre-existing gaps in the building envelope. Some states refuse to enforce these provisions on public policy grounds; unfortunately, Texas is not one of these states. Getting the right expert to determine the cause of loss and then prepare a scope of loss based upon that specific covered cause is essential to properly evaluating coverage for the claim.

The Loss Quantification Phase

Measuring and documenting the loss is crucial to making the claim and returning the operations back to normal. To begin, the policyholder should inventory all of the property that has been damaged, destroyed or lost as a result of the event. Next, financial records should be collected; including property valuation records, asset inventories, financial records, sales records, pre-loss budgets or projections, production records and other similar data. If the actual documents have been destroyed or lost due to the event, efforts should be made to reconstruct the data to the greatest extent possible. Efforts should also be made to segregate and keep accurate records of all expenses incurred as a result of the event. With the data, the policyholder should analyze what the business would have earned had the physical damage not occurred and compare this figure with the actual earnings and expenses consistent with policy provisions.

The Claim Resolution Phase

To promptly and fairly resolve the claim, the policyholder should take a cooperative approach with the carrier's claims adjuster. The scope of the loss and period of restoration should be agreed upon with the adjuster, if possible. The claim should be presented to the adjuster in the format adjusters are used to seeing. Recognize that adequately adjusting the loss often requires

a fair amount of specialized knowledge about the industry. Educate the carrier about the industry. Patience and cooperation are the order of the day. In all of your communications with the carrier tell only one story that is based upon the facts. Do not exaggerate the claim or speculate about the loss. Remember to request advance payments where appropriate and based on the documented loss to date. Keep the prompt payment deadlines in mind when handling the claim so that there will be an orderly progression with the claim. Finally, confirm all agreements with the adjuster, in writing. Following these tips, should help resolve the claim fairly and promptly with the least possible amount of time and expense.

Conclusion

Business interruption insurance claims are extremely complicated and complex and usually take a great deal of time to resolve successfully. There are also tricks and pitfalls for the unwary or inexperienced. With a difficult and complex claim, it is usually wise to employ an experienced team of attorneys, accountants, and claim preparation consultants early in the claims process to create a plan for analyzing coverage, capturing and documenting the data to support your arguments for payment and if all else fails to preserve evidence for presentation in court.

ABOUT THE AUTHOR

J. BRANTLEY DURRETT, III

J. Brantley Durrett, III is an attorney that has been representing policyholders in insurance disputes against insurance companies and other wrongdoers since 1989.

His experience is concentrated in complex civil litigation matters with a particular emphasis in representing policyholders in insurance litigation. He has represented homeowners, apartment owners and business owners against their insurance carriers when their contractual and other rights have been abused by unscrupulous insurance adjusters and other scoundrels. He also has significant appellate experience including appeals before the Texas Courts of Appeal and the United States Court of Appeal for the Fifth Circuit. In an appellate capacity, Mr. Durrett has handled insurance cases of first impression in Texas and won reversals of lower court mistakes.

Mr. Durrett has been licensed in Texas since 1989. He has obtained millions of dollars in settlements for his clients. He is a member of numerous professional organizations, including the State Bar of Texas (Sections: Litigation, Insurance, and Commercial and Consumer Law) and the American Association for Justice (Sections: Motor Vehicle Liability, Insurance, Medical Malpractice, Commercial Litigation and Expert Witnesses).

Recently, Mr. Durrett restructured his practice to accept only a limited number of serious cases each year. As a result, he can provide a greater level of personal service for his clients without the distraction of maintaining a heavy case load.

If you think you have wronged by your insurance carrier or its adjusters, contact Mr. Durrett for a FREE, no obligation consultation.

Durrett Law Firm

The **Durrett Law Firm** is dedicated to protecting your interests and handling your case with personal attention, aggressive advocacy, professionalism, and compassion.

We have been successfully representing policyholders against their insurance carriers in Texas for almost 20 years. We understand that sustaining a insured loss can be financially and emotionally devastating. We strive to balance this concern with the unique and rigorous demands of the legal system. We understand that the selection of an attorney is an important decision, and which may have far reaching consequences.



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