Business Interruption Coverage: A Hedge Against Disaster

Recent catastrophes such as the Deepwater Horizon oil spill and the crisis at the Fukushima Daiichi nuclear plant serve as grim reminders that governments and corporations are often caught unprepared for natural and man-made disasters. The economic losses that ensue – while they pale in comparison with the human suffering wrought by these calamities – are often astronomical. And those you can hedge against, with insurance that includes business interruption coverage.

Business interruption coverage is intended to replace lost income resulting from "property" damage. But, as in all matters involving insurance, the scope of the coverage depends on the policy language and state law. Recovery for any particular loss often turns on the ability of a skilled practitioner to appreciate nuance in policy language. Since there are many versions of business interruption coverage, subtle distinctions in policy language often provide a pathway to coverage. That said, the majority of business interruption policies share some common characteristics, and chief among them is a requirement that "physical loss or damage" to "property" occur.

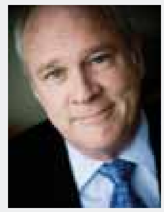
No reputable insurance company would dispute, for example, that a building gutted by fire suffered "physical loss or damage." But, does a manufacturer of processed food suffer "physical loss or damage" when a portion of its inventory is adulterated with an organic pathogen? How about a hotel that is unscathed but for the discovery of harmful asbestos, requiring that all guests be evacuated? Many courts have found coverage in those instances because the insured property, while remaining structurally sound, has been rendered unfit for its intended purpose.

Insurance companies facing claims for diminished business income may respond that coverage is unavailable unless the policyholder suffers a "suspension," "interruption" or "total cessation" of business activity. While there may be judicial support for this interpretation of certain policy language, the better reasoned decisions find coverage where the policyholder has suffered physical loss or damage that adversely affects its operations even though all business activity is not halted.

Once coverage is established, the policyholder must be in a position to quantify the loss. While policy provisions governing loss calculation differ, most limit recovery through a defined "period of restoration". A typical provision may limit recovery to the period it would take the policyholder, using reasonable means, to resume normal operations, but not to exceed a specified maximum. Consequently, businesses should keep accurate records of not only current profits and losses, but also historical data for comparison purposes. Such information forms the basis for any claim for lost income related to a disaster.

The bottom line: You should review your property insurance to make sure it includes business interruption coverage. And when disaster strikes, you should reach out to experienced insurance coverage practitioners to make sure you get the coverage you paid for.

About the Authors



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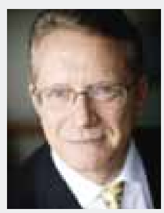

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