

Tips for Preparing a Business Interruption Claim

Article By:

Covert J. Geary

J. David Moore

David J. Forestner

Commercial enterprises doing business in Louisiana and surrounding states are beginning their recovery in the wake of Hurricane Ida from recent power outages and associated wind and water damage. Many face significant property losses, often accompanied by business income losses due to a complete cessation of business activities. Many business owners had the foresight to purchase business interruption insurance; however, the complexity of a business interruption claim, coupled with demands on operating capital, creates a difficult scenario for business owners.

- **Report the claim immediately.** The commercial property insurance policy will have specific claim reporting requirements. Although some of these policies include a telephone number, report the claim in writing. If you have an insurance broker that obtained the coverage for you, get them involved in the initial reporting process and have them use any influence they have with the insurer to begin the initial evaluation of the claim as soon as possible.
- **Know your policy.** An insured will maximize recovery by tailoring the claim to the coverage provided by the insurance policy. A thorough preliminary analysis of the policy should be conducted prior to any substantive communications with the insurer. Attention must be paid to the forms of coverage provided, covered locations, covered causes of loss, exclusions, and the loss calculation methodology. Identify your “business operations,” any potential coverage problems, and the strongest arguments for recovery as soon as possible. Keep your eye on ancillary coverages; in addition to business interruption losses, coverage may include extra expenses, expediting expense, and debris removal.
- **Thoroughly examine and document all physical damage.** Generally, business interruption coverage is triggered by a covered cause of physical damage to covered property. The physical damage must be substantial enough to cause the interruption. Thus, it is imperative to conduct a thorough examination and to photograph and document damage in detail before any remedial work is performed. A construction expert or other expert can be helpful in most

cases. Damage, especially water damage, can be far greater than the untrained eye can detect. If the insurer contends the loss resulted from a non-covered risk, then a skilled independent expert should be consulted.

- **Assemble a team.** A business interruption claim is complex and calls for more forensic work than does a property damages claim. It requires a team of people with different skill sets — including accounting, legal, insurance, and construction. A highly regarded manager should be selected to direct, communicate, and coordinate the overall process.
- **Communicate frequently with the insurer.** Let the insurer know about the day-to-day demands the loss has caused — the need for cash for operations, the need to repair property or equipment, or other demands you face. This helps resolve doubts the insurer may have about your claim, and it may increase your chance of receiving a much-needed cash advance. Keeping the insurer aware of any intended repairs and changes in business operations may also prevent denial of later damage claims under the terms of the policy.
- **Mitigate your damages where possible.** You have a duty to mitigate your losses. Often, the best strategy for minimizing damages is to make decisions as though insurance coverage does not exist. This is your business, and until the insurer commits to covering the loss, you cannot know whether or what damages you will recover for the loss. It is important, however, to inform the insurer of the steps you intend to take prior to committing to repairs or other significant steps. This is particularly important in the period soon after the loss. At some point, as the insurer investigates the claim and gives an early indication of the coverage, you can partner with the insurer in committing to expensive repairs, such as replacing a damaged roof or tearing down and rebuilding.
- **Teach the insurer about your business.** You know your business best, and you can help maximize your recovery by teaching the insurer about your operations and thus putting the losses into the proper perspective. An examination by someone who does not understand your business is more likely to be superficial and may result in a lower reimbursement.
- **Present your case to the insurer.** Do not rely on the insurer to tell you what your losses are, as — as mentioned above — the insurer will not understand the business the way you do. Do not approach the damage claim by merely responding to the insurer's questions and filling out the insurer's forms. Instead, present your losses as you or your accountant understands them. Be prepared to fully document the losses, which may require a theoretical projection of the amount of business income lost. This will require a comparison with financial figures from prior years, growth estimates, pricing, and other trends.
- **Do not rush the claim.** Business interruption claims take time, particularly for the accountants who must document the loss. To deal with this, a business owner can request cash advances along the way. Advances benefit both parties, because they provide the insured with needed cash and help mitigate its losses, thus reducing the amount of the claim. But because it is often impossible to determine in the early stages how the claim will play out in the end, settling early can be to the insured's detriment.
- **Be prepared to take a hard line when necessary.** Insurers are generally quite circumspect of business interruption claims. If you disagree with the insurer's handling of the claim, speak up. Know the timelines required by law for action by the insurer, and the penalties that may apply for delays or unreasonable treatment by the insurer. If the claim is being mishandled,

speak up in terms that are civil but firm, and be prepared to take a more aggressive position if the insurer does not respond as you believe it should.

Preparation of a business interruption claim is a complex task that requires significant time and effort. The need for operating cash during the reconstruction places additional pressures on an insured business. Following these golden rules can help the owners of commercial enterprises facilitate the preparation of their business interruption claims.

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