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Ensure business is properly covered for interruption caused by storm damage

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With the 2012 hurricane season at its peak months (goodbye Isaac), business owners should examine their commercial property insurance policies to ensure they include business interruption insurance. Basically, business interruption coverage is designed to replace lost income resulting from property damage.

As in all matters involving insurance, the scope of any such coverage depends upon the precise policy language employed and particular state law.

Here are some points to consider:

Triggering coverage: Has your company sustained physical loss or damage to property? The availability of insurance coverage for a given loss often turns upon the ability of a skilled practitioner to appreciate nuance in policy language. Subtle distinctions in policy language often provide an avenue to coverage. The majority of business interruption policies share certain common characteristics, chief of which is a requirement that “physical loss or damage” to “property” occur.

At first blush, the physical loss or damage requirement seems noncontroversial. No reputable insurance carrier, for example, would dispute that a structure flattened by windstorm suffered physical loss or damage. But, does a manufacturer of processed food suffer physical loss or damage when a portion of its inventory is found to be adulterated by an organic pathogen, even though the product is not structurally altered? How about a commercial building that is physically unscathed but for the presence of harmful asbestos, requiring that all guests be evacuated? Courts have found coverage in those instances because the insured property, while remaining structurally sound, has been rendered unfit for its intended purpose.

Importantly, many business interruption policies do not limit the term “property” to “property owned by the insured.” Coverage is often available for damaged property owned, leased, used, or operated by the policyholder in its business, or even property not fitting the above descriptions but nevertheless necessary for the conduct of the insured’s business. Other policies provide coverage where damage occurs to premises within a specified vicinity of the insured’s property. This can be particularly important where a hurricane leaves your commercial property untouched but destroys the surrounding area, preventing access, electricity or delivery of supplies and products.

What degree of “interruption” triggers coverage under the policy?

Insurance companies facing claims for diminished business income related to an actual or threatened hurricane may trumpet the familiar tune that coverage is unavailable unless the policyholder suffers a "suspension," "interruption," or "total cessation" of all business activity. While there is 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.

In 2000, the Insurance Services Office, an insurance industry organization that drafts many commonly used policy forms, began to include a definition of "suspension" that contemplates either the complete cessation of business or a slowdown caused by physical damage to property.

Valuing the loss

Once coverage is established, the policyholder must now be in a position to quantify the loss. While policy provisions governing loss calculation differ, most limit recovery through a defined "period of restoration." Typical provisions limit recovery to the amount of time it should take the policyholder, using reasonable means, to resume normal operations subject to a specified maximum. As we have learned from past storms, these periods can differ markedly.

Businesses impacted by a hurricane should be careful to keep accurate records of historical data for comparison purposes along with current profits and losses. Such information forms the basis for any claim later to be made to an insurance carrier for lost income.

Best Practices

All businesses should regularly review their commercial property and business interruption insurance coverage. These are some of the basics, but experienced insurance coverage practitioners can help navigate the process.

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