

Checklist For Business Interruption Losses

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Hurricane Ike has wreaked havoc, caused significant business interruption and has been estimated to have caused over \$25 billion in insurable losses, according to one of the world's largest insurance brokers. The good news for business owners is that the insurance protections should help the rebuilding effort. A key part of most business-property insurance is business-interruption coverage. Business-interruption coverage covers the loss of business income and at least some of the extra expenses associated with restoring business operations after a loss or damage to covered property from a covered cause of loss.

Below is a checklist to use in the preparation of claims for business-interruption losses. The terms of business-interruption policies may vary greatly. As with any insurance claim, the first step is to review the policy, or the likely applicable policy language if the policy itself is not available.

REVIEW THE POLICY

Types of Coverage

"Business-interruption insurance" includes a number of coverages, including the following:

- **Business Income Coverage.** Designed to replace income that would otherwise have been earned by the business had no loss occurred. Business income is generally defined as the net profit or loss before taxes, plus continuing normal operating expenses, including payroll. This insurance definition contrasts with the accounting definition of net profit (or loss), which is the net profit after taxes.
- **Extra Expense Coverage.** Designed to pay for necessary expenses incurred during the period of restoration of the property because of the loss or damage to property at its original location, or at a temporary replacement location. Extra expense coverage may also include expenses that minimize the time your business is unable to operate or those necessary to repair or replace damaged property or valuable papers and records.
- **Contingent Business Interruption Coverage.** Designed as an extension of coverage to cover loss of income incurred due to a property loss at key supplier or customer location.
- **Civil Authority Coverage.** Covers loss of business income and extra expense for a short time due to government's denial of access to property, due to a covered loss at a location owned by others. A waiting period may apply.
- **Ingress/Egress Coverage.** Coverage may be provided for loss of business income and extra expense when you cannot gain access to your property for a reason other than government action.
- **Miscellaneous Related Coverages.** May include dust and debris removal coverage, event-cancellation coverage, valuable-papers coverage, and service-interruption coverage.

○ Possible Coverage Adjustments

- **Extended Period of Indemnity**: May extend period for loss of income coverage for a specified time beyond completion of repairs.
- **Definition of “Suspension”**: May determine whether a complete or partial cessation of business is needed to trigger coverage.
- **Resumption of Operations**: May limit business interruption loss to the point at which operations can be even partially resumed, even though the business may not be able to fully sustain itself.
- **Coinsurance Provision**: Requires that policyholder must pay a share of business income loss if the actual loss sustained is substantially higher than the estimated income established at the time insurance was purchased.
- **Agreed Value**: Establishes in advance a maximum for recovery in any given month.
- **Covered Locations**: Identifies what locations are covered. There may be extensions of coverage for “newly acquired locations” to cover property recently acquired, and for property at locations not owned by the insured.
- **Building Ordinances**: May provide coverage for the additional time to rebuild due to compliance with building ordinances.
- **Electronic Media and Records Limitation**: May limit replacement period for electronic data and documents.

○ Business-Interruption Exclusions

As a general matter, because there typically must be a covered loss to covered property for business income coverage to apply, the exclusions in the property section of the policy are generally relevant. These exclusions may include mold, design or defective products, and “pollution” exclusions. Property insurance policies also increasingly include concurrent-causation, ensuring-loss, and other potentially relevant exclusions. The policy should be examined carefully in light of case law and an overly broad denial of coverage.

○ Conditions and Limitations

- **Appraisal**: Business-interruption coverage may include specific appraisal provisions for valuing the loss of income and extra expenses.
- **Duties in the Event of Loss**: Business interruption policies may require notice of claim or a proof of loss within a short period of time. These periods can act as statute of limitations, requiring prompt action.
- **Loss Determination**: Policies typically contain general provisions for determining the amount of business income loss and extra expense incurred. They may point to the need for help from your agent/broker, accountant, or attorney.
- **Suit Limitation**: The policy may limit the time in which suit can be brought. A year is a typical period, but the period may be much shorter.

□ GIVE NOTICE OF LOSS AS SOON AS POSSIBLE

- An alleged delay in giving notice may void coverage. Give notice as soon as possible to avoid notice as a defense to coverage.
- Other documentation can be submitted as soon as feasible to do so.

CALCULATING THE BUSINESS INTERRUPTION LOSS

Impact

- Identify the operation affected (office, store, restaurant, plant)?
- Is there interdependency with other operations?
- Is production partially or totally down?
- Are sales affected? Partially? Totally?
- How long will you need to continue paying salaried employees until the business is restored? Can they assist with restoration of the premises and business operation?

MITIGATION AND RECOVERY

Insurance policies generally require a policyholder to mitigate its losses. Some common questions may include the following:

- Are you able to access alternative facilities or conduct sales or service be conducted elsewhere?
- Can rental equipment, overtime or additional shift work be used? What is the added cost?
- How much production can be made up with overtime and how long will it take?
- Will you be able to supply customers from inventory during loss period?
- If you draw down inventory to meet orders, how long will it take you to replenish them to pre-loss levels?
- Are there limited markets or major suppliers? Are long-term contracts at risk?

SUBMIT THE CLAIM PURSUANT TO POLICY TERMS

Refer to the Property Insurance Checklist for information about submitting a proof of loss and documentation of the loss.

For more information, please contact the following Jenner & Block attorneys:

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