

INSURING AGAINST THE FURY OF MOTHER NATURE

by *Lorelie S. Masters*

Hurricane Katrina has left unprecedented destruction in her wake. The insurance industry has estimated, even with many areas still inaccessible, that losses will climb into the billions of dollars. Although it is impossible to assess the true extent of the loss before the flood waters recede, policyholders can (and should) take steps now to prepare claims and begin to prepare proofs of loss for insured properties in Louisiana, Mississippi, and Alabama. The first step, as always, is to give notice now. Legal issues, like number of occurrences for purposes of application of policy or deductibles, also may arise and need analysis.

Below are checklists that policyholders can use in preparing claims for damage to, and loss of, property and for business-interruption losses.

Property Insurance Checklist

Property insurance generally covers physical damage to covered property, subject to the conditions and exclusions of the insurance policy. This checklist outlines some of the steps that are commonly required for presenting a claim under a property insurance policy, and some of the documentation that may be necessary. Property insurance policies may differ greatly in their provisions, and policyholders need to review the particular requirements, restrictions, and exclusions of their policy.

1. Gather insurance policies and related insurance record.

If you cannot find your policy, contact your insurance company or insurance broker or other agents (like lawyers who may have copies) to request a copy.

2. Give notice to your insurance agent and insurance company(ies) immediately, preferably in writing.

Notice should provide the following basic information to the extent known at present:

- ✓ Name and address of insured
- ✓ Contact name, phone, and fax number
- ✓ Location of loss
- ✓ Brief description of the loss
- ✓ Date and time of loss

3. Prepare a Proof of Loss.

A proof of loss provides details identifying the property destroyed or damaged, and documents the amount of loss incurred. Generally, any information, substantiating the claim (photographs, receipts, records) can become part of your proof of claim. Check with your insurance company for the specific

information required. Some companies may have a detailed list of documents they seek, or require you to fill out a particular form.

4. Collect and organize backup documents:

- ✓ Vital records, ledgers, and other proof supporting valuation
- ✓ Photos or videos as proof of damage.

5. Submit proof of loss, photos, and reports to insurance company and assist in its investigation.

Property insurance policies typically include a provision entitled "Duties in the Event of Loss" that allows an insurance company to conduct an investigation of the claim with the policyholder's cooperation. This provision may give the insurance company the right to interview the policyholder claimants in a process often called an "examination under oath" (EUO). The policy may also require the policyholder to allow the insurer to inspect the property, take reasonable steps to protect the property, and generally cooperate with the insurer's investigation. Courts generally have enforced such provisions. Consult an advisor with regard to any questions.

Checklist for Business-Interruption Losses

Business-interruption coverage is a typical, and important, part of most businesses' property insurance programs. Business-interruption coverage is purchased to cover 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. Covered causes of loss typically include hurricane, flood, fire, civil commotion, and similar acts arising after Hurricane Katrina. Losses from these interruptions should be covered by a policyholder's business-interruption insurance.

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. Typically, business-income coverage is subject to the policy conditions, including the "Duties After Loss" discussed above. Thus, the policyholder may be required to substantiate the claim by making available the company's books and records, financial statements, income and expense reports, and the like.

☑ Review the Policy

Types of Coverage

The general reference to "business-interruption insurance" usually includes a number of coverages, including the following. In purchasing insurance, policyholders should determine which of these coverages are necessary to protect their business and ensure the ability to continue operations with minimal disruption in the case of damage or loss.

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.

Coverage is generally limited to the loss of income sustained until the property is restored, or for a specified period of time following the physical loss or damage. Other limitations apply to the period for which "ordinary payroll" coverage is included (often 60 days).

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 the property. Extra expenses include those necessary to continue operating the business at its original location, or at a temporary replacement location until the original location is repaired. Extra expenses 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. For example, if a key supplier experiences a fire at its plant and is unable to deliver parts or goods necessary for the continuation of your business, you may have a claim for a contingent business interruption loss.

Civil Authority Coverage

Covers loss of business income and extra expense 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 before coverage begins, and coverage generally applies only for a few weeks.

Ingress/Egress Coverage

Coverage may be provided for loss of business income and extra expense when you cannot gain access to your property without the government action required under the coverage for closure by a civil authority.

Miscellaneous Related Coverages

Other 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 and ensuing-loss exclusions which should be examined carefully in light of case law and a tendency for insurance companies to apply them too broadly to preclude coverage.

Other exclusions may be found in the business-interruption coverage part. Some typical exclusions include:

Idle Periods

Coverage is generally excluded for periods when operations would normally have been idle.

Interference

Additional costs for rebuilding due to labor unrest may be excluded.

Loss of Contracts

Income loss on long-term contracts may be limited to period ending with completion of repair or replacement.

Consequential Losses

Coverage for consequential losses may be excluded; however, business-interruption policies may contain an extension of coverage for such losses.

Utility Service Interruption

Precludes coverage for interruption of services from utilities.

Finished Stock

For manufacturing operators, recovery for lost profits on finished stock may be covered under physical damage to property, rather than under business interruption.

Conditions and Limitations***Appraisal***

In addition to loss conditions of the property policy, business-interruption coverage may include specific appraisal provisions for valuing the loss of income and extra expenses.

Duties in the Event of Loss

Read the policy carefully to clarify what duties you have in the event of a loss, in addition to those in the general property policy. Business interruption policies may require notice of claim or a proof of loss within a short period of time.

Loss Determination

Policies typically contain general provisions for determining the amount of business income loss and extra expense incurred. However, you may need to engage the assistance of your agent/broker, accountant, or attorney to provide clarification of some provisions.

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

Some states like Alabama continue to penalize policyholders and void coverage for alleged delay in giving notice, without requiring any proof of prejudice to the insurance company. Give notice as soon as possible to avoid notice as a coverage issue.

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?
 - What is the normal operation capacity of the operation that was damaged?
 - At what percent of capacity were you operating just prior to the loss?
 - At what rate did you expect to operate during the loss period?
 - How many shifts a day did you operate? How many do you operate now?
 - How many shifts a day, week, or month do you dedicate to maintenance?
 - What is expected downtime?
 - Can you add shifts or operate temporarily at another site to reduce the loss?
- 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?

- Do you need to pay hourly employees to retain them during the time the business is not operating? Can they help with clean-up and repair during restoration?

☑ **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 could 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 and documentation of the loss. Especially in large claims, policyholders may be well-advised to retain at the outset their own adjuster to help document and present their claim. •

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