

The Special Perils of Insurance Coverage

By: Joshua Gold



Joshua Gold

Risk management for hotels and resorts has never been easy. The perils are abundant; challenges range from protecting against employment related claims to ensuring the general safety of guests to protecting against Caribbean hurricane risk. Hotel operators and owners can do much to mitigate risk by considering factors other than price when purchasing their insurance coverage. Below is a check-list of measures that can give policyholders an advantage when dealing with potentially major loss scenarios.

1. Purchase Tailored Insurance Coverage

Policyholders should seek to buy insurance coverage tailored to protect against risks unique to their business. For example, so-called “all-risk manuscript” property insurance policies that protect against risks to hotels and resorts. Often included within this manuscript coverage is “time element” coverage, which replaces business income when operations are interrupted. Time element coverage can protect against losses stemming from interruptions to operations due to the loss of a liquor license, infectious or contagious disease, food or drink poisoning, vermin or pests. Other provisions may cover lost income due to murder, suicide or rape on premises, or losses occasioned from the evacuation of the casino or hotel after the report or detection of an explosive device. Insurance coverage may also be available to cover costs of relocation of guests during a business interruption.

Some manuscript policies also protect against loss of business income due to damage away from the premises at sites upon which the policyholder is reliant, such as conference centers, sports complexes, convention centers, and amusement parks.

2. Avoid Onerous Insurance Policy Terms

While shopping for the provisions outlined above, seek-out policies containing the fewest escape clauses that might enable the insurance company to avoid coverage for a large claim. What the big print gives, the fine print can undermine. For example,

policyholders should insist upon policies that do not tie the calculation of time element coverage to the performance of other properties owned by the policyholder. Some insurance companies insert language that they argue entitles them to offset losses at one location with profits earned at another.

Policyholders should also insist upon policies that do not “require” a complete cessation of business to trigger time element coverage. Some insurance companies have argued that there is no time element coverage unless the policyholder’s business has completely ceased. This can be a devastating position when a policyholder operates numerous business activities at a location and an insured peril only affects some of them. Even a partial interruption of activities can have dire consequences for the hotel’s profitability. Avoiding such policy traps is worth both time and money; policyholders are wise to shop for the most favorable terms available. Shopping by price alone is usually a mistake.

3. Avoid Incongruities In your Insurance Program

Many hotel and resort operators have to fill out large insurance programs with scores of different insurance companies because of the numerous and sometimes significant location-specific risks posed by some of their properties (Caribbean, California, cities at high risk for terrorism, etc.). While it can be painstaking, policyholders should take care to ensure that their excess policies track the language of their primary policies to avoid gaps in coverage and other potentially unpleasant surprises. Just because an excess insurance policy is described in the insurance binder or declarations page as “follow form” does not mean that it really is.

Conclusion

Policyholders need to be smart shoppers, using their brokers and underwriting meetings not only to find the best premium quotes, but also to find the best terms of coverage.

Joshua Gold is a partner in the New York office of Anderson Kill & Olick, P.C. Mr. Gold represents and counsels a number of gaming and hospitality clients with regard to insurance coverage matters, risk management issues, disputes, lawsuits, captive insurance companies and international arbitrations.