

ALERT

Business Interruption Insurance For Hospitality Companies

By David P. Bender Jr.

Business Interruption Insurance can assist hotels, restaurants and other hospitality companies in transferring some of the risk incurred when the business has its operations disrupted, resulting in a partial or total loss of business income. Like other forms of insurance, business interruption insurance purports to transfer the risk of revenue loss from the company to its insurer under certain circumstances. Effective risk transfer requires, however, that the hospitality company identify and then quantify the precise risks that it wishes to transfer. The purpose of this article is two-fold. First, a checklist of potential risks is provided for the company to evaluate against its current or proposed business interruption policy. And second, this article identifies other issues to be considered by the company in its assessment of its current or proposed business interruption policy.

Potential Risks to Be Considered

Business Income Coverage: Business income coverage is 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. Note that this definition contrasts with the accounting definition of net profit (or loss), which is the net profit after taxes.

Extra Expense Coverage: Extra expense coverage is supposed to pay for necessary expenses incurred by the business 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 the business is unable to operate or those costs necessary to repair or replace damaged property or valuable papers and records.

Contingent Business Interruption Coverage: Contingent business interruption coverage is offered as an extension of coverage to cover loss of income incurred due to a property loss at a key supplier or customer location.

Civil Authority Coverage: This coverage is meant to cover the loss of business income and extra expenses for a short time due to the government's denial of access to property, due to a covered loss at a location owned by others.

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Ingress/Egress Coverage: Ingress/egress coverage may provide for loss of business income and extra expenses when access to the company's property is impeded for a reason other than government action.

Leader Property Coverage: Leader property coverage is designed to cover a policyholder for loss of business income stemming from damage or destruction to a third-party property that attracts customers or business to the policyholder. For instance, smaller stores at a mall may have leader property coverage to cover them for the drop off in customer traffic and business that might befall them because of the closure of the flagship store at the mall.

Extended Period of Indemnity: An extended period of indemnity can be purchased to extend the period for loss of income coverage for a specified time beyond completion of repairs.

Miscellaneous Coverage: Examples of miscellaneous coverages that can be acquired include dust and debris removal coverage, event-cancellation coverage, valuable-papers coverage and service-interruption coverage.

Other Considerations

Definition of Suspension of Operations: Typical language in a business interruption policy states:

We will pay for the actual loss of Business income you sustain due to the necessary suspension of your "operations" during the "period of restoration." The suspension must be caused by direct physical loss of or damage to property. . . . The loss or damage must be caused by or result from a Covered Cause of Loss.

How does the policy define "suspension"? Under the policy, does suspension require a complete or just a partial cessation of business to trigger coverage?

Partial Resumption of Operations: What if the company can partially resume operations but the partial resumption cannot fully sustain the business? Make sure that your policy does not limit your recovery when you partially resume operations.

Delays Due to the Governmental Entitlement Process: Anyone in business can attest to two absolute truths when it comes to the government. First, they are here to help and secondly, government doesn't move very fast.

Going through the governmental entitlement process to rebuild after a loss can be lengthy and expensive. Does your policy provide coverage for additional time it takes to rebuild due to the protracted entitlement process?



Loss of Electronic Data: If the damage to your property also includes the loss of key electronic data, what coverage, if any, do you have for replacing this lost data? Does the time it takes to recapture or replace this data extend the period in which the business is supposed to resume operations?

Beware of the Exclusions: Like any insurance policy, a business interruption policy's coverage will not extend to causes excluded under the policy. A hotel's closing precipitated by the discovery of mold for example would not typically be covered under the exclusions section of most policies.

Know Your Duties in the Event of a Loss: A business interruption policy usually requires that a notice of claim followed by a proof of loss submission occur within a time specified in the policy — and such time limits can be relatively short. The company should know what its duties are in the event of a loss and ensure that it complies with its duties timely and thoroughly. To assist the company in complying with its duties, we recommend that the company assemble a team to react quickly to the partial or total interruption of business due to a covered loss. This team should consist of someone from the financial side of the business (to document the business income loss and assist in the preparation of the proof of loss), the company's outside insurance coverage lawyer, and the company's broker.

Conclusion

With attention to policy details and a protocol in place to respond to a business income loss, the hospitality company can mitigate a portion of its risk by transferring the same to its insurance company. ▲

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But Anderson Kill's experience in the hospitality and lodging industry goes beyond insurance coverage. Our Hospitality Industry Group attorneys routinely assist clients with needs relating to real estate and construction, bankruptcy, executive compensation, litigation, finance and a wide range of corporate issues. Our specific experience providing legal services to companies in the hospitality industry ranges from the routine — such as negotiating construction contracts — to the extraordinary — such as litigating a multimillion dollar insurance coverage case arising out of severe hurricane damage to an international resort and acting as insurance counsel to the world's largest chain of casual dining restaurants.

For additional information about the firm's national Hospitality Industry Practice Group, please visit our web site at www.andersonkill.com or contact the group's chairs:

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