



PROTECTING THE HOUSE

INSURANCE COVERAGE IN THE GAMING AND HOSPITALITY INDUSTRY TARGETS SPECIAL PERILS

BY JOSHUA GOLD

Those in the gaming and hospitality business are exposed to a wide range of perils, from lawsuits stemming from slot machine malfunctions to food poisoning claims to catastrophic hurricane risks.

Effective risk management can mitigate these risks to a substantial degree, and also transfer the financial risk of loss and damage to insurance companies through the purchase of insurance and, in some cases, reinsurance where captive insurance companies are utilized.

It is important to keep in mind that not all insurance policies are created equal. There are huge variations in the scope (and quality) of insurance coverage that can be purchased from the insurance industry for gaming and hospitality risks—especially when it comes to so-called “first-party” property insurance.

The bad news is that most insurance products are consumer-unfriendly, laden with pages worth of mind-bending terms, conditions, exclusions and amendments. The good news is that there are some very good forms of insurance coverage in the marketplace containing a number of special insurance coverages specifically tailored to those in the gaming and hospitality business. These types of coverage grants can help cover or at least defray the financial burden of a serious loss.

Below is a list of some key first-party insurance benefits that are uniquely suited to gaming and hospitality risks which policyholders can use as discussion points when meeting with insurance brokers, underwriters and consultants to determine their risk management needs. Set forth below is also a list of five key tips to protecting insurance coverage rights and benefits.

INSURING GAMING/HOSPITALITY

A number of specialized insurance products have been developed by the insurance industry for those firms operating in the gaming and hospitality areas.

Time-Element Coverage for Risks On or To Premises

Insurance coverage is available to protect the profits that the gaming business would have made but for the property loss or damage at the premises. For example, some all-risk manuscript property insurance policies provide so-called “time element” insurance coverage (i.e., insurance coverage for the loss of business income where operations are interrupted) by reason of action upon casino control commission laws or regulations.

Some insurance policies also promise insurance coverage for time element losses where there is an interruption in operations due to the loss of a liquor license, infectious or contagious disease, food or drink poisoning, vermin or pests, strike, riot or civil commotion, or defective sanitation. Other insurance policy provisions may cover lost business income due to murder, suicide or rape

on premises, or losses occasioned from the evacuation of the casino or hotel based upon the report or detection of an incendiary or explosive device.

Furthermore, insurance coverage may be available to insure the costs to relocate guests during a business interruption. Insurance can also be purchased to insure the costs of providing guests rebates or to cover goodwill payments and refunds as a result of a business interruption.

Time-Element Coverage for Perils Away from the Premises

There is also some very valuable insurance coverage available that protects the policyholder for loss of its business income when a peril causes harm away from the policyholder’s gaming and resort premises but still affects operations. Policyholders with some of these special forms of insurance coverage have been able to secure insurance coverage where main routes used to access their premises have been damaged, where waterways become unnavigable, where airports have been shut down or where air travel has been restricted.

Some insurance forms protect against the loss of business income due to pollution of land or water within a certain proximity to the gaming or resort operations. Other forms of insurance may protect against business income losses where there is interference with the use of airports or port facilities, civil authority or military action impairing or preventing access to the policyholder’s properties or consumption of goods and services.

Various forms of “contingent” business income insurance is also available. Such insurance can be purchased for off-premises perils that could damage or otherwise affect other businesses upon which the policyholder is reliant, such as conference centers, sports complexes, stadiums, exhibition halls, medical centers, convention centers and amusement parks.

Insurance coverage may also be available to cover losses of business income due to an interruption in the receipt of critical incoming services, such as electricity, gas, fuel, steam, water, and voice, data or video service. There may also be

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insurance coverage for the interruption of services that are outgoing, such as sewage service and, again, voice, data or video service.

Last, policyholders can also purchase insurance coverage for the loss of business income when an incendiary device is “near” the premises. However, such coverage, especially for overseas properties, is likely to get harder and more costly to purchase given several deadly international incidents of late.

TIPS TO PROTECT YOURSELF

1. Document and Keep Everything Involving the Insurance Purchase

The insurance industry is notoriously poor at documenting insurance coverage agreements in an accurate and timely manner. It is not uncommon for insurance policies to be delivered months after the insurance is bought and bound. Sometimes insurance policies are never furnished.

Accordingly, it is imperative to keep all insurance binders, quotes, cover notes, summaries of coverage, underwriting submissions, PowerPoints and other related documents so that evidence of the coverage exists should a claim precede delivery of the insurance policy or should the insurance policies ultimately delivered conflict with the insurance coverage purchased at the outset.

2. Calendar and Address the Time-Sensitive Provisions of the Policy

Virtually all insurance policies contain notice provisions, requiring some form of notification to the insurance company of potential claim circumstances, actual claims, demands, lawsuits, regulatory actions, bordereaus of claims and anything else that the specific policy language may call for. Insurance companies regularly deny valid insurance claims by arguing that the policyholder did not comply with the notice provisions.

Many insurance companies will argue for a forfeiture of insurance coverage based on a technical violation of the notice clause, even where there is no prejudice or adverse effect to the insurance company. As such, providing prompt notice is a priority to avoid later fights.

Similarly, many forms of insurance coverage, such as crime insurance, property insurance and food contamination insurance, routinely require the filing of proofs of loss within 60, 90 or 120 days. Rarely will a policyholder be able to comply with this deadline—especially where a complicated calculation of a business income claim is required.

As such, it is very important to negotiate, in writing, an extension of the time within which to file a proof of loss. Another approach can be to file a partial or interim proof of loss where the loss amounts are still in a state of flux or the calculation is continuing.

Also very important to calendar is any statute of limitation that might control the filing of a lawsuit against the insurance company should it refuse to provide coverage for the insurance claim. Some insurance policies, including property and crime insurance policies, may seek to limit the time within which a policyholder can bring a lawsuit to enforce its coverage to as little as 12 months from the date of the loss.

This is rarely enough time to permit the insurance claim process to unfold in the normal course. Accordingly, policyholders have to make sure not to miss these shortened suit limitation periods if they are to avoid jeopardizing even the most valid of insurance claims.

3. Purchase Time-Element Coverage Without The Traps

Despite some of the unique and beneficial insurance coverage provisions that exist as outlined earlier, care must be given to the fine print and escape hatches that are invariably incorporated into insurance policies. One issue that should be made crystal clear in the insurance policies is that there need not be a complete cessation of business for insurance coverage to be triggered.

Some insurance companies have argued in the past that unless the policyholder’s business is completely shuttered, there is no business income coverage, even where an interruption may shut down 90 percent of business operations. Obviously, this is not the kind of coverage limitation a policyholder would ever want as part of its insurance program.

4. Look for Continuity of Coverage Throughout the Tower of Coverage

Because many gaming and hospitality companies are insuring large properties with high values and extensive operations, they often have to buy insurance coverage in huge, structured insurance programs with numerous different insurance companies selling parts of the overall insurance protection purchased.

It is not only important to make sure the lead or primary insurance policies have properly documented the scope of insurance protection. It is also important to make sure that the excess insurance policies conform to the primary policies and do not create gaps in insurance coverage that can end up tainting the entire insurance program. Uniformity and seamlessness of the coverage is a daunting task, but also a critical one.

5. Purchase of Offshore Insurance Products

Given needs to find “capacity” to fill large insurance programs—whether for property insurance programs, general liability coverage or D&O insurance programs—policyholders are sometimes offered insurance coverage from offshore insurance companies in Bermuda, the U.K. and Europe. Policyholders should be aware that some of these insurance products call for the arbitration of insurance claims in places like Bermuda or London with application of a choice-of-law clause that may be policyholder-unfriendly.

While there may be occasions that a policyholder has little choice in purchasing such insurance products because of issues over finding enough risk transfer “capacity” in the marketplace, ultimately, policyholders should attempt to stay clear of such clauses. Almost uniformly, such clauses are inserted to put the policyholder at a disadvantage.

CONCLUSION

Like with so many things, information is critical when entering the insurance marketplace. There is a vast array of insurance policies (and promises) that are not created equal. Knowing what questions to ask and what benefits to look for provides obvious advantages in securing suitable protection for the risk profile of the policyholder.

And, even once the insurance product is purchased, there is still a fair amount of work to be done to make sure that the insurance actually delivers the promised benefits when needed. ■

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