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ALERT

SPECIAL ALERT
FROM ANDERSON KILL AND
ANDERSON KILL LOSS ADVISORS

Income Loss Insurance Coverage for Businesses in the Frozen Zone

By Finley Harckham and Joshua Gold

On July 18, 2007, an old steam pipe ruptured under Lexington Avenue in Manhattan, causing a massive explosion that resulted in the loss of life and numerous injuries. The blast also created a huge crater in the middle of the avenue and caused damage to nearby buildings. The Bloomberg Administration reacted to this event by creating a “frozen zone” in an area of several square blocks around the site of the blast that has been closed to pedestrian and vehicular traffic. Businesses in the frozen zone have effectively been shut down, and as a result are losing revenue, incurring extra expense, or both. Some of those businesses have insurance coverage for their losses under provisions that are not well known, but that are found in many standard form property policies.

Coverage For Order of Civil Authority

Many standard form property policies provide coverage for income lost as a result of an order of civil authority that prevents access to insured property. Typically, the order must result from property damage of the type covered by the insurance policy but, importantly, damage to the insured’s own property is not required to trigger coverage. The creation of the Frozen Zone resulted from such an order. So, businesses with civil authority type coverage may be able to recover lost profits caused by the city’s order. Certain insurance policies provide this coverage without a waiting period or deductible, which means that even if access to a business is prohibited for only a few days, the loss of income may be insured.

Although civil authority coverage appears to be tailor-made for this incident, policyholders may face resistance from their insurers on

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a number of grounds. For example, insurers may deny a claim if access to a business was merely rendered more difficult, or inconvenient, but not actually prohibited by the order. Second, since concern over a release of asbestos in the blast was reported to be one of the reasons for the establishment of the Frozen Zone, insurers might invoke asbestos exclusions found in some policies as a basis for denying a claim. However, for a number of reasons those defenses may not be valid. Also, deductibles might limit, or eliminate, coverage.

Extra Expense Coverage

Companies that incur extra expenses to reduce their loss of income from this incident may be insured under the extra expense coverage provided in most property policies. Typically, this coverage is afforded for costs incurred to reduce a covered loss of business income. A loss resulting from an order of civil authority may or may not qualify as a trigger for extra expense coverage, depending upon the insurance terms and the form at issue.

Other Potentially Applicable Coverages

Many standard form property policies contain other coverages that might respond to the losses suffered by businesses near the site of the blast. These include property damage coverage, utility service interruption coverage, and coverage for lack of ingress to, or egress from, insured premises.

Focus on Insurance Now

Policyholders should report Frozen Zone related losses to their insurance companies as soon as possible. Policyholders should review their policies carefully and, if the possibility of coverage exists, report the incident at once to the insurance company. Then, since the most likely sources of coverage are somewhat arcane, if a business does not have a risk manager, it should consult with a public adjuster or other insurance professional about how to prepare a claim. ▲

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