

Business Resumption:

Insurance Only Bright Light for Many Businesses Darkened by World Trade Towers Blast



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When the lights went out at the World Trade Center in February, that disaster spelled the beginning of serious financial problems for all businesses located within the famous towers. Those businesses were forced, without warning, to shut down. They scrambled to establish emergency relocations which, for many, permitted nothing more than skeletal operations. While many of these offices by now, "business as usual" may not resume for a very long time, if ever.

Insurance may provide considerable relief for these businesses and others facing liability from the blast, including the Port Authority of New York and New Jersey, which is the World Trade Center's landlord; the parking garage management; and building security. All those who have businesses have returned to their suffered damages or who may be liable for the damages of others should examine their insurance policies. Coverage for the many types of losses incurred in major explosions may be found in many types of insurance policies.

The Policies

For example, **property policies** can cover policyholders for damages they suffer as a result of damage to tangible property. Tangible property can vary from furniture to business records to inventory.

General **liability policies** cover policyholders for damages they may incur because of damage to a third party. For example, if the Port Authority is sued by a tenant of the World Trade Center for damages because of bodily injury and property damage, the Port Authority should be substantially covered for defense and indemnification.

Business interruption insurance is designed to protect the earnings that a policyholder would have enjoyed had there been no interruption. This insurance should protect policyholders who have to suspend production, resulting in lost sales and profits. It also should reimburse policyholders for expenses that continue despite the cessation of income, such as salaries, professional fees, certain utility charges and insurance premiums. Policyholders covered under these policies are obligated to seek out, and take advantage of, ways to minimize their losses.

Obstacles to Coverage?

For tenants to obtain coverage under first-party policies for damages that result from the explosion, they first would have to show they suffered "property damage." These policies typically define property damage as physical injury to property. Certainly, some of the tenants in the World Trade Center suffered physical injury to their property. Fire, smoke and other fallout from the explosion constitutes physical injury under any conceivable understanding of the term. In addition, endorsements frequently attached to first-party policies extend this coverage beyond physical injury. Typical endorsements cover business interruption losses as extra expenses that arise out of the explosion, such as relocation costs.

To obtain coverage under third-party policies, businesses sued by tenants also would have to show that the tenants suffered "property damage." Under these policies, property damage typically includes physical injury and loss of use in the absence of physical injury. Policyholders would have to show that the explosion that gave rise to the property damage was an "occurrence." The stan-

standard-form comprehensive general liability insurance policy defines “occurrence” as “an accident, including continuous or repeated exposure to substantially the same general harmful conditions.” The explosion would be an accident under this definition.

Insurance companies may attempt to argue that the explosion was not an “accident,” but rather a deliberate act. This argument should not bar coverage, however, because policies of this type were not intended to deprive policyholders of coverage for deliberate acts against them by third parties.

Under both first-party and third-party policies, insurance companies may attempt to bar coverage by asserting “pollution” or “war risk” exclusions. Neither exclusion, however, should apply. The “pollution exclusion,” for example, was not designed to bar coverage for explosions, nor the release of substances that inevitably result from them. Similarly, acts of terrorism do not constitute “war risks.”

A Brighter Future

For displaced tenants of the World Trade Center, and for the businesses that these tenants may choose to sue, the future may seem dark right now. Immediate relief, however, may lie in insurance. All of these entities should immediately locate each and every insurance policy that might possibly provide coverage to them. After they do so, and then study the policy terms, the future may become a lot brighter. ■

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