DRYCLEANERS NEWS®

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Ten Tips To Preserve Business Income Insurance Coverage

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Drycleaning businesses are among the many types of small businesses economically affected by man-inflicted disasters such as September 11 and natural disasters like last year's Hurricanes Katrina and Rita.

When those businesses move from the press of survival and immediate recovery to rebuilding, insurance will play a critical part. In particular, business income – or business interruption – insurance coverage helps all businesses, including drycleaning establishments, whose operations are dislocated by unforeseen disasters such as hurricanes, terrorist attacks, or other covered events causing an interruption in normal business activities.

Business income insurance is designed to pay a policyholder its lost profits and continuing unavoidable expenses when the policyholder's operations are disrupted by damage to property at the place of those operations or a place critical to those operations.

It is designed to do for the business what it would have done but for the catastrophe. Coverage extensions in common use also cover losses of income when property critical to the policyholder's operations is not damaged, but the policyholder's operations are nonetheless affected.

These tips are intended to assist the region's cleaners and other policyholders in preserving their right to business income coverage.

1. Be prepared for a challenge.

Business income coverage disputes between insurance companies and their policyholders tend to be about the amount of coverage owed to the policyholder. The main issue in dispute often is how much profit the policyholder expected during the months it was not operating. It is not surprising to learn that insurance companies will often have much more conservative estimates of the performance of the policyholder during the relevant period. Further, in situations like those in the Gulf states, for instance, where thousands of businesses will file business income claims, insurance companies will be under pressure to avoid taking positions that could open them up to greater obligations to other policyholders. Accordingly, although plenty of policyholders will be satisfied with their insurance recoveries, you must press your claim as if there will be a dispute for which you will need reliable evidence: keep accurate records, retain all relevant documents, record insurance company positions, provide requested information, etc.

2. Locate the applicable policies.

Policyholders seeking business income coverage will look to first-party insurance policies, or policies that promise to protect policyholders from losses they suffer to their own property or expectations of profit. These policies are generally referred to as "property" insurance policies, but they come under other names, like "inland marine," "fire" or "multi-peril" insurance policies. Accordingly, review all of your insurance policies for potential coverage. Further, if you lost your policies as a result of the disaster, storm, fire, or other event, you should seek copies from your broker, agent and insurance company.

3. Read the policy.

Property insurance policies typically are bulky, and their wordings and coverages complex, but property insurance is not astrophysics. A close reading of your policies will probably reveal most of the provisions under which coverage may exist and form a basis for intelligent discussion with your broker or insurance company.

Property insurance policies contain three basic types of coverage: property damage, business income and extra expense.

Property damage coverage is designed to pay for physical loss or damage to buildings and business property – machinery, equipment, inventory, raw materials – as well as property of others in the policyholder's control.

Business income coverage is designed to pay for the policyholder's loss of profit, and the policyholder's unavoidable continuing expenses (for instance, insurance premiums, salaries of management and often ordinary payroll, but not raw materials because they are not needed by an inactive operation) during the period in which the policyholder is out of business because of damage to property necessary for the policyholder to conduct operations.

Extra expense coverage pays for the policyholder's costs in minimizing or avoiding a business income loss (for instance, costs incurred in relocating temporarily) and, depending upon the form, possibly also those costs the policyholder would not have incurred but for the loss (for instance, security guards to prevent looting).

Businesses that suffered business losses unrelated to any physical damage to their property may still have coverage under property insurance policies.

The first coverage for which to look is contingent business income coverage, designed to cover a policyholder for loss of business income caused by damage to or destruction of property owned by others (typically, suppliers or customers).

Similarly, businesses can look to contingent extra expense coverage to pay for increased costs incurred after the disaster to minimize or avoid a contingent business income loss. Accordingly, if a drycleaning business incurred additional expenses in order to avoid or minimize a contingent business income loss – for instance, by purchasing cleaning supplies from another company at greater cost – it may have coverage for those costs under contingent extra expense coverage.

Policyholders may also secure monetary recovery through the Civil Authority clause, often listed as an "additional coverage" in property insurance policies. This clause is designed to provide coverage for business income losses incurred as a result of an order by a civil authority preventing access to the policyholder's place of business.

Some policies may provide ingress/egress coverage, designed to cover losses when ingress onto or egress from property is made more difficult or prevented by, for instance, storm damage or flooding. Finally, affected businesses should also look to service interruption coverage, designed to provide coverage for business income losses attributable to dislocation of utility or telecommunications service.

4. Give notice.

Give notice as soon as possible. There is no harm in doing so, and the failure to do so can be disastrous. Include all known losses and a catchall to cover losses that may be discovered after the fact. Do not wait for complete information; if necessary, provide updates later.

5-6. Know what you know/know what you don't know.

If your claim is big enough, you should consider hiring a public loss adjuster and/or an accounting firm that specializes in business income accounting. The insurance company will almost certainly hire an "independent" adjuster, and one or more accounting firms that specialize in representing insurance companies; it will also probably hire, and conceal the hiring of, a law firm.

If the insurance company presents an adjuster or accounting firm as "your" or an "independent" adjuster or accountant, do not hesitate to do a little research on that firm. A quick Internet search will likely reveal that the company works solely or primarily for insurance companies. Your insurance company's engagement of such a firm may give you an early indication of how it is treating your claim.

Public loss adjusters and forensic accountants work for policyholders and know how business income claims have historically been presented and handled, which is a tremendous advantage when dealing with insurance companies.

Without the assistance of these professionals, even a savvy businessperson may be at a severe disadvantage in negotiating his claim. For instance, many insurance companies took the position after the attacks of September 11 that business income claims for retailers had to be adjusted downward because people in Manhattan were not active consumers in the weeks after those attacks. This sounds reasonable on its face, perhaps, but is wholly contrary to the position the insurance industry has always taken: that business income losses are paid based on expectancies as of the moment before the loss.

Business income claims are based on forecasts and expectancies of what the business would have done during the period when its operations are affected. Accountants on both sides will examine records to make projections, but you must make sure that you impress upon the insurance company's consultants any particular facts which would have affected your performance during that period.

7. Quantify the claim.

You must properly quantify your claim. Courts do not require policyholders to prove their loss through any particular type of evidence, but the general rule is the more evidence, the better. Again, if your claim is big enough, you should consider hiring an accounting firm that specializes in property insurance coverage accounting. Accordingly, gather any and all evidence which would aid you in proving projections, and give it to your public loss adjusters and forensic accountants.

8. Be a squeaky wheel.

Insurance companies frequently resort to the tactic of rationing by hassle: they deny claims and do all they can to discourage policyholders, finally paying only the persistent policyholders who do not take "no" for an answer. Accordingly, you should do everything in your power to demonstrate to the insurance company that you will not simply go away.

For instance, you should write letters and demand information and positions on, and explanations of, coverage. If unanswered, you should write further letters incorporating all previous requests for information and demanding immediate responses.

Further, you should endeavor to have your insurance company commit its positions to writing. Insurance company claims handlers and adjusters frequently will try to change positions they have taken with you as the parameters of the loss become more clear. For instance, an insurance company may take the position that a policyholder's business income loss from the destruction of one drycleaning location should be examined by looking at the performance of all the policyholder's drycleaning locations, because the insurance company assumes the other factories would pick up the business lost by the destroyed factory.

Later, after determining that the other locations also suffered business income losses due to collateral effects of the loss, the insurance company may argue that only the income stream of the destroyed location is relevant. To protect yourself from such shifting positions, and to take full advantage of them if the claim is litigated, you should try to make the insurance company commit in writing to every position it takes.

Further, you should confirm all conversations in writing immediately. Written correspondence is a must if the claim goes to litigation. If a claim goes sour, the insurance company will write self-serving memos that give a retrospective spin on things and incorporate conversations without written confirmation. Last, you should seek to respond immediately in writing to all requests for information, lest the insurance company later complain that your own lack of alacrity was the cause of your business income losses.

9. Be aware of policy deadlines.

You should be aware of deadlines in the policies. For instance, some policies require that proofs of loss be filed within a certain amount of time (often, 60 days). The law of some states tolls this time limit until the insurance company requests a proof of loss and sends the policyholder a blank form, however.

Nonetheless, you should confirm in writing when the insurance company considers the proof due. If the date indicated by the insurance company does not provide sufficient time for you to file a proof of loss, submit a partial proof of loss setting forth losses to date and reserving the right to file subsequent and more complete proofs.

Of more import, most policies require that any suit filed against the insurance company must be filed within a short time (usually, one or two years). Further, regardless of what the policy says, the period may be controlled by state statute. If you are in negotiations with the insurance company, you may be able to argue the insurance company waived its right to assert this limit, but if negotiations are running up against that limit, you should get a written extension of your time to file suit.

10. Challenge adverse coverage positions.

As noted above, insurance companies allocate by hassle, and the squeaky wheel (i.e., the complaining, letter-writing policyholder) gets the grease (the coverage it purchased). As a last resort, if tenacity alone is insufficient to compel the insurance company to pay a claim, you should commence litigation.

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