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INSURANCE

September 11, 2001: How Insurance Can Help

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The events of September 11, 2001 stunned the world. The loss of life was enormous.
The location of the attacks in New York caused major impacts to financial, legal and insurance-related businesses. Insurance can at least help soften the financial blow from these tragic attacks.

The economic losses from the attacks in New York, Washington, and Pennsylvania are staggering. Early estimates of financial losses at the World Trade Center alone were in the billions of dollars. Insurance industry estimates of losses are in the range of $25 to $40 billion, or more. Reinsurance recoveries (which strictly speaking should not be a policyholder's concern) are likely to be very difficult.

A number of potential insurance coverage issues have come to the surface:

War Risk Exclusions. A number of insurance companies already have said flatly that they will not assert "war risk" exclusions. Further, although there has been some mention made of "terrorists acts" exclusions, such exclusions often do not apply in the United States, and are relatively uncommon in any event. It remains to be seen whether such exclusions will be asserted by direct insurance companies.

On the reinsurance front, however, direct insurance companies may have difficulty obtaining their reinsurance. It may be that reinsurers will be more willing to direct rely upon such "war risk" exclusions. Unlike like most direct insurance policies, many reinsurance policies require arbitration in foreign jurisdictions. Thus, the protections afforded by courts in the United States may not be available.

Reinsurance is an appropriate area for concern. Lloyd's of London alone estimates its loss in the attack at $1.9 billion, which is equivalent to 12% of the 2001 market capacity. This loss exceeds the largest prior loss at Lloyd's-the 1989 losses related to Hurricane Hugo-by $400 million. Indeed, the reinsurance problem was made clear by a request to the United States Congress to create a terrorism reinsurance pool. In other words, the government may become the reinsurer of last resort for losses on account of terrorism, or such coverage may simply not be available in the future.

Lost Policies. "Notice" Provisions. Given the magnitude of these events and the loss of major offices of two major insurance brokers, the issue of potentially lost policies and provisions regarding very brief notice periods are potential stumbling blocks. Anderson Kill has already petitioned the New York State Legislature to alleviate the potential negative effect on policyholders. We suggested that:
(1) insurance companies affirmatively make policies available; (2) notice of the events of September 11, 2001 be deemed given under any potentially applicable insurance policy; and (3) policyholders be given no less than 180 days to file a proof of loss.

Given the level of destruction and the loss of Aon and Marsh offices, policyholders may not be able to locate their policies. Indeed, as of two weeks after the attacks, Aon was reported to still be "reconstructing" insurance policy files lost in the World Trade Center attack.

What to do now. Insurance policyholders should take a number of steps to protect their insurance:

1. Find your insurance policies.
2. Give notice, check proof of loss provisions.
3. Secure tolling agreements with your insurance company.
4. Consider emergency repairs and loss mitigation.

Additional tips on insurance coverage for the disaster are on our website: www.andersonkill.com.

Property Insurance. Property insurance often provides coverage to damage to property owned by the policyholder as well as providing insurance coverage for business interruption and additional expenses.

Property insurance policies contain three types of coverage: property damage, business income and extra expense. Various other types of coverage may be implicated, like that for accounts receivable, computer equipment or valuable records.

Business property losses and business interruption losses are often the subject of valuation disputes. Valuation disputes may be less likely for certain policyholders because their losses are "limits losses" far in excess of the limits of their insurance polices. We hope that the gravity of these events leads to full and fair payment of policyholder claims, but there is a reasonable possibility that insurance disputes will arise in this area.

What If My Property Was Not Damaged, But I Have A Loss? Losses unrelated to physical damage to property may be covered under property insurance policies. For example, check for four types of coverage:

(1) Contingent Business Income Coverage: covers loss of business income caused by damage to or destruction of property owned by others. A business which had a business relationship with a company physically located in a destroyed building may be able to recover for losses of income from business dislocation suffered in the wake of the destruction of that company's physical plant.

(2) Contingent Extra Expense Coverage: pays for increased costs incurred after a disaster to minimize or avoid contingent business income loss. Additional expenses in order to avoid or minimize a contingent business income loss –for instance, by using a service provider located elsewhere, rather that at the World Trade Center, or by purchasing cell phones for employees – may be covered under contingent extra expense coverage.

(3) Civil Authority Clause: often listed as an "additional coverage" in property insurance policies, provides 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. Access to many premises was prohibited for a number of days after the attack and for some areas is still prohibited. Businesses not directly closed may be able to make claims for business income losses if they stemmed from the inability of clients to get to their premises because of the orders of civil authorities.

(4) Service Interruption Coverage: provides coverage for business income losses attributable to dislocation of utility or telecommunications service. There are businesses in New York which still do not have telephone or internet service; income losses from such dislocations should be covered under most property insurance policies.

Liability Insurance. In addition to property insurance coverage, liability insurance may have a significant role to play. While the American Trial Lawyers Association has called for a moratorium on civil lawsuits, that moratorium likely eventually will draw to a close. Already, the two airlines whose planes were hijacked, United Airlines and American Airlines, face the potential threat of liability lawsuits. Injured parties and their lawyers are sure to seek compensation. It remains to be seen whether the airlines will be successful in their effort to obtain effective federal legislative protection from such potential lawsuits.

Congress already has passed a bill creating an administrative Victims' Compensation Fund to pay claims of all victims. The details are still developing. A number of bar associations and lawyer groups are expected to provide *pro bono* assistance to victims in making claims against the Victims' Compensation Fund.

Life Insurance. Early reports are that life insurance claims will face relatively few hurdles. "Double indemnity" provisions which increase death benefits for death by "accident" or by "accidental means" may become an issue. The law is largely favorable to policyholders. Early reports described insurance companies "considering" the question.

September 11, 2001 may have stunned the world, but insurance will have a role to play in softening the financial impact and helping individuals, businesses and other organizations recover.

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