

Business Interruption Insurance:

Keeping Your Business Afloat While You Fix What's Broke

By Diana Shafter Gliedman



The hospitality industry relies upon property insurance to protect against the risk of property damage, from minor mishaps to the catastrophic damage caused by hurricanes, accidents and other unforeseen events. But in the aftermath of a disaster, restaurants, hotels, and other entities may face significant losses in revenue which are not directly related to costs incurred by fixing crumbling frescoes or a malfunctioning electrical system, but rather, arise out of the interruption of operations required to repair the damage. If and when this occurs, business interruption insurance may provide compensation for these losses.

Business Interruption Insurance Does Not Cover the Property Damage — It Covers The Losses You Incur While Seeking to Recover From the Property Damage.

The purpose and nature of business interruption insurance — often provided as a separate provision, section or endorsement to a commercial property insurance policy — is to “indemnify the insured

against losses arising from the inability to continue the normal operation and functions of the business, industry, or other commercial establishment insured.” Business interruption insurance is “designed to protect the earnings which the insured entity would have enjoyed had the event or occurrence insured against not intervened, but not to place the insured in a better position than if no interruption of the business had occurred.” Thus, business interruption insurance does not reimburse the policyholder for the cost of damage to property; rather, business interruption insurance provides coverage for “loss resulting from **necessary interruption of business** conducted by the Insured and **caused by loss, damage or destruction** by any of the perils covered herein during the term of this policy to real and personal property.” In *Davidson Hotel Co. v. St. Paul Fire and Marine Ins. Co.*, the owner and operator of the Hotel Deauville in Miami, Florida, sought coverage from its insurance company, St. Paul Marine and Fire Insurance Company, after water infiltrated a bus duct in an electrical room, leading to water damage in the hotel. As a result of the incident, building inspectors from the City of Miami Beach were called to inspect the hotel, and required compliance

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with numerous building code provisions before the hotel could re-open. St. Paul sought to argue that it was not liable for lost revenue incurred by the hotel during the time it took to repair the premises and comply with the code, but the Court disagreed, holding that under the policy's business interruption provision, St. Paul was liable for the business interruption resulting from the enforcement of the building code, as well as the property damage itself.

Business Interruption . . . Or Business Cessation?

Unfortunately for policyholders, many insurance companies — and some courts, as well — have taken the position that “business interruption” really means “business cessation,” and have refused to provide coverage where a policyholder's business is severely curtailed by property damage if it is not completely shut down. For example, in two cases entitled *Ramada Inn Ramogreen, Inc. v. Travelers Indem. Co. of America* and *Hotel Properties, Inc. v. Heritage Ins. Co. of America*, insurance companies argued — and courts agreed — that the curtailment of a hotel's business caused by the destruction of the hotel's

restaurant did not constitute a recoverable business interruption because the hotels were able to remain open, albeit with far fewer customers. The better-reasoned authority has recognized that an interruption does not require a total halt to all operations. Policyholders looking to avoid this type of argument, however, should speak to their insurance brokers about obtaining coverage that specifies that partial disruptions of a business are covered. By obtaining the best and broadest business interruption coverage available, the hospitality industry can focus on fixing what is broken — without worrying about going out of business before the repairs are completed.

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