Insurance Coverage in the Absence of Property Damage

by Joshua Gold and Marshall Gilinsky

Recent and tragic catastrophes like the natural disasters in Japan and Thailand, the Gulf oil spill and the Icelandic volcano eruption have placed into focus once again the importance of commercial property insurance that covers losses even where the policyholder's own property suffers no direct damage. Many policyholders in the financial, gaming, hospitality and retail sectors purchase property insurance policies that provide "time element" protection, covering lost business income caused by damage to property away from the insured premises or owned by others. In fact, some property insurance policies provide coverage for losses of business income where there is no property damage at all.

The trick for many risk management professionals is finding the best coverage to protect against the perils they face. There are huge variations in the scope (and quality) of insurance coverage that can be purchased from the insurance industry - especially when it comes to so-called "first-party" property insurance. The bad news is that most insurance products are laden with pages of exclusionary terms and amendments. The good news is that quality insurance can still be found - there are some very good insurance policy forms in the market place that contain a number of provisions tailored to cover important risks that are not directly tied to the insured premises but nevertheless represent a significant threat to the revenue stream of policyholders in certain industries.

For example, some insurance policies promise insurance coverage for time element losses where there is an interruption in operations due to the loss of a liquor license, infectious or contagious disease, strike, riot or civil commotion, or defective sanitation.

Many policyholders also purchase "special" forms of insurance coverage for losses occasioned by occurrences that interfere with access routes to the policyholder's premises, impede navigation on waterways or restrict air travel.

Some insurance forms protect against the loss of business income due to pollution of land or water within a certain proximity to policyholder's operations. Other forms protect against business income losses where civil authority or military action impairs or prevents access to the policyholder's properties or consumption of goods and services.

Various forms of "contingent" business income insurance are also available. Such insurance can be purchased for off-premises perils that could damage or otherwise affect suppliers, customers or markets upon which the policyholder relies. Although standard types of coverage often require "direct physical loss or damage" to the policyholder's own property in order to trigger coverage, most of these enhanced coverages include no such requirements. Indeed, there is no reason why the trigger has to be tied to physical damage to any property anywhere. As we saw with the eruptions in Iceland, many businesses can be severely affected by travel disruptions even where there is no damage to anyone's private property. Similarly, businesses worldwide were severely impacted by the natural disasters in Japan and Thailand, and there is no reason why business exposed to loss from such disruptions should not consider the similar exposures they face and have such risks expressly covered under their property programs. In the end, a day or two spent carefully going over your policy wording with your broker, insurance consultant or lawyer can pay big dividends when claims arise - not only in avoiding frustration in the claims process, but also maximizing the ultimate payment of your claim.

Even if you have managed to secure favorable property insurance coverage terms in your insurance program, your work is not done: Remember to dot "i"s and cross "t"s should there be a loss. The claims payment process (especially for time element insurance claims) can be a drawn-out affair. As such, remember to calendar important deadlines, such as the proof of loss and suit limitation dates set forth in the policy. Also make sure that claims communications with your insurance companies are well documented. Finally, ensure that all excess insurance companies (not just the primary) have been notified of the loss and receive regular communications regarding the claim.

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