Property Insurance and Disaster Recovery

by Joshua Gold and Lawrence Bartelemucci

Whether man-made or naturally occurring, a disaster can imperil even the most rock-solid business. Not shockingly, the very survival of a business often hinges on how quickly and how completely it is able to recover from the catastrophe. As such, developing a disaster recovery plan and assembling a team to implement that plan, before the loss occurs, is invaluable. While generally no single disaster recovery plan will be right for every business, below are some insurance and property considerations that require prompt action when a disaster occurs.

Insurance Concerns

The vast majority of businesses purchase commercial property insurance. Depending upon the type of coverage bought, this insurance can cover loss or damage to insured property, time element losses, research and development, public relations costs, loss adjustment expenses, loss mitigation and many other items. To both preserve and maximize this coverage, develop a checklist of certain action items to address with your property insurance companies (including your excess insurance companies):

Notice: Provide timely notices of claim to all insurance companies.

Proofs of Loss: Schedule and meet deadlines to file proofs or statements of loss. If the proof of loss deadline appears unrealistic, be proactive and get extensions (in writing). If there is not enough time to do so, file a partial proof of loss reserving the right to amend/supplement the proof.

Suit Limitation: If your policy contains a suit limitation clause (and almost all do), this date must be conservatively calendared, no matter how friendly your local underwriter seems to be while handling your claim.

Election of valuation method: Check your insurance policy to see if there is any deadline on the date by which the insurance policy seeks to have you elect the valuation method for the loss claimed.

Time requirements to rebuild or replace: Similar to the point above, see if there is a deadline by which policy seeks to have the rebuilding or replacement of the affected property completed.

Preservation of evidence: Sort out in writing how evidence is to be preserved if destructive testing or immediate remedial work needs to be undertaken.

Loss mitigation: Address in writing the loss mitigation steps you intend to take. If there is no time to do this in advance, then address it in writing soon thereafter, memorializing the urgent conditions that required you to act immediately.

Demands for partial payments: Some policies have express provisions requiring the insurance company to make partial payments or claim advances. Invoke these clauses so that cash flow issues are ameliorated.

Property Considerations

The plan for getting your loss adjusted and paid should also consider (both before a loss and most certainly after) issues that are specific to your property needs:

Is your space worth rehabilitating? If it is, then your company will need to contract for design and construction services to rehabilitate the current space or rebuild on site. If the space that will be rehabilitated is leased, your company needs to coordinate its efforts with the landlord.

If it is not worth rehabilitating, then your company must consider how it will dispose of the space (for example, selling the property or cancelling the lease), and how it will acquire new permanent space. In addition, your company will need to contract for design and construction services for its new space. This process should involve a zoning analysis to ensure that your company can build what it needs and conduct its operations on the chosen site.

How will you operate on a current basis? Whether or not your company relocates, it will likely need to lease temporary space to resume current operations. It may also need to rent space to store saved or salvageable equipment and inventory.

Depending on the cause of the loss (for instance, if it was a loss during construction/renovation), litigating against the party causing the loss (and its insurance company) should be considered, either directly or through your insurance company.

Telecommunications leasing and services should be analyzed. Both existing and any new contracts should be tailored to your operations and the realities of the space within which you will conduct business.

The recovery may require financing--be it an acquisition loan, line of credit to continue operations, or construction loan to fund the rehabilitation or new construction. The different means available for acquiring such financing should be considered.

Depending upon what a business plans or ends up opting to do after a loss, tax consequences may arise. A tax analysis should factor into the ultimate decisions made about either repairing/replacing the damaged property, or even abandoning the property and opting for a new property for conducting business. Attention should be paid to your property insurance as it may specifically address tax treatment and provide certain options and benefits depending upon the circumstances.

While no one can work out every detail of a disaster plan before disaster strikes, preparing checklists in advance, and taking steps such as scouting out viable temporary space, can greatly smooth the path to recovery and maximization of insurance claims.

__Joshua Gold__ and __Lawrence Bartelemucci__ are shareholders in the New York office of the law firm of Anderson Kill & Olick, P.C. Gold regularly represents policyholders in insurance coverage matters and disputes concerning arbitration, time element insurance, electronic data and other property insurance coverage issues. Bartelemucci's practice concentrates in the area construction law, where he has drafted and negotiated numerous manuscript and AIA form owner-builder, construction management, architect, design-build and development agreements.

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