



The Legal Update

POLICYHOLDER REPRESENTATION

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Business Interruption Claims—Part II

Last month, we looked at the different types of business interruption insurance. This month we examine the methodology for processing the claim. Business interruption claims are some of the most complex and challenging claims a policyholder will face. Typically, they take a long time to resolve because the full extent of the loss is usually

not realized for some period of time. Therefore, it is important to assemble a team of professionals to assess coverage, quantify the loss, and resolve the claim.

The Policyholder's Team

Depending upon the complexity of the loss, the policyholder's team can be small or large. Small losses may only require the services of the in-house bookkeeper. On the other hand, large losses may require the policyholder to assemble an inter-disciplinary team that includes lawyers, forensic engineers, forensic accountants and claim preparation experts such as public insurance adjusters. After deciding upon the complexity of the loss, the process of assessing coverage begins.

The Coverage Assessment Phase

Critical to the successful resolution of the claim is knowing the coverage provided by the applicable policies of insurance. The first step in this phase is to select competent coverage counsel. The chosen counsel should have experience in reading and understanding the complex language used in business interruption policies. Since business interruption policies vary among the carriers, it is important the counsel recognize the various contours of the coverage provided by the policyholder's particular policies.

The second step in this phase I to collect all possible policies that may contain business interruption insurance coverage. If the policies themselves were

lost or damaged as a result of the event, then the insured should request a true and correct copy of the policy from his broker or carrier. Counsel should bear in mind that in addition to property and casualty policies, additional business interruption coverage may be found in package policies, inland marine coverage, boiler and machinery coverage, or other insurance policies. Even coverage under policies held by other parties should be investigated where the policyholder is named as an additional insured or where its property is in the control of third parties. To be

thorough, counsel should review all insuring agreements, coverage extensions, sub-limits and deductibles, exclusions and exceptions bearing on the loss. This review will alert the policyholder not only to the applicable insurance coverage for the loss, but also to its responsibilities during the claims process such as providing the carrier with prompt notice of the loss, filing a proof of loss, mitigation of the loss, and preservation of the insurer's salvage, and subrogation rights.

The last step in the process is to analyze the cause of the loss. Perhaps, this is the most critical step in this phase because the claim may literally be in the balance. Most property and casualty policies contain anti-concurrent causation provisions. These provisions operate to reduce or eliminate insurance coverage for a loss if there are multiple causes of loss and at least one of which is not covered under the policy. For example, if a hurricane damages a building's roof causing water damage to the interior of the building and in addition thereto, the building suffered water damage due to intrusion from wind



**"Remember Time is Money."
- Ben Franklin**

Continued on Page 2

For more articles, reports, studies, news, and commentary on these and other legal matters...

Contact Brant Durrett - bdurrett@sbcglobal.net

Ask the Attorney ...



Brant Durrett
Attorney at Law

Q: *I suffered a loss to my home. My insurance carrier issued a check jointly payable to me and my mortgage company. I gave the check to the mortgage company. I completed the repairs, but the mortgage company has not released the insurance company's payment. How do I force the mortgage company to pay?*

A: With regard to residential real property, Texas law requires the mortgage company to provide you with notice of each requirement that you must comply with in order to obtain the proceeds of the check within 10 days of receiving payment. §557.002(a) TEX. INS. CODE. After you have completed the required repairs, you need to send the mortgage company notice of the completion of the repairs and a request for payment. Within 10 days of receiving notice and a request for payment, the mortgage company must release the proceeds to you or provide notice to you that specifically explains the reason for its refusal to release the proceeds to you and each requirement with which you need to comply in order for the mortgage company to release the proceeds to you. §557.003 TEX. INS. CODE. If the mortgage company fails to comply with either of these statutes, it must pay you 10 percent interest on the proceeds for the period of noncompliance until paid.

If you have a question you would like Mr. Durrett to answer, please email it to bdurrett@sbcglobal.net

Business Interruption Claims-Part II cont.

driven rain through cracks in the windows or walls of the building from an opening not created by the hurricane, insurance coverage for the entire loss could be excluded under the anti-concurrent causation clause, unless the policyholder can prove the amount of loss specifically caused by the covered peril – water intrusion through the roof as opposed to pre-existing gaps in the building envelope. Some states refuse to enforce these provisions on public policy grounds; unfortunately, Texas is not one of these states. Getting the right expert to determine the cause of loss and then prepare a scope of loss based upon that specific covered cause is essential to properly evaluating coverage for the claim.

The Loss Quantification Phase

Measuring and documenting the loss is crucial to making the claim and returning the operations back to normal. To begin, the policyholder should inventory all of the property that has been damaged, destroyed or lost as a result of the event. Next, financial records should be collected; including property valuation records, asset inventories, financial records,

sales records, pre-loss budgets or projections, production records and other similar data. If the actual documents have been destroyed or lost due to the event, efforts should be made to reconstruct the data to the greatest extent possible. Efforts should also be made to segregate and keep accurate records of all expenses incurred as a result of the event. With the data, the policyholder should analyze what the business would have earned had the physical damage not occurred and compare this figure with the actual earnings and expenses consistent with policy provisions.

The Claim Resolution Phase

To promptly and fairly resolve the claim, the policyholder should take a cooperative approach with the carrier's claims adjuster. The scope of the loss and period of restoration should be agreed upon with the adjuster, if possible. The claim should be presented to the adjuster in the format adjusters are used to seeing. Recognize that adequately adjusting the loss often requires a fair amount of specialized knowledge about the industry. Educate the carrier about the industry. Patience and cooperation are the order of the day. In all of your communication with the

carrier tell only one story that is based upon the facts. Do not exaggerate the claim or speculate about the loss. Remember to request advance payments where appropriate and based on the documented loss to date. Keep the prompt payment deadlines in mind when handling the claim so that there will be an orderly progression with the claim. Finally, confirm all agreements with the adjuster, in writing. Following these tips, should help resolve the claim fairly and promptly with the least possible amount of time and expense.

Conclusion

Business interruption insurance claims are extremely complicated and complex and usually take a great deal of time to resolve successfully. There are also tricks and pitfalls for the unwary or inexperienced. With a difficult and complex claim, it is usually wise to employ an experienced team of attorneys, accountants, and claim preparation consultants early in the claims process to create a plan for analyzing coverage, capturing and documenting the data to support your arguments for payment and if all else fails to preserve evidence for presentation in court.

A PHI DELTA REUNION IN DALLAS



Pictured are: Brant Durrett, Biff McGuire, Mike Coleman, Chris Moock, Grant Davis, Jeff Dickinson, Miles Harper and Derek Turner.

In 1982, I pledged Phi Delta Theta Fraternity at Baylor University. It was quite an honor for me, since Phi Deltas were the best fraternity on campus and my father had pledged Phi Delta Theta at the University of Mississippi.

But, in the process of attending law school, getting married and establishing my career, I neglected to maintain many of the friendships established through the fraternity. This January, after a period of almost 24 years since graduation, eight members of my original pledge class of 16 were able to arrange our schedules to meet for one night in Dallas for a guys only dinner and poker night.

We had dinner at Perry's Restaurant in Dallas. The dinner was outstanding and the fellowship was even better! Despite the obvious visible changes such as expanding waistlines and increasing hair loss; most of my friends had changed very little. We were able to pick up where we left off 24 years ago and really enjoy each others company reminiscing about past exploits.

As a result, we have vowed to make the last weekend in January an annual gathering.

DLF IS GOING GREEN

This February, I went to the 2nd Annual Law Practice Management Course sponsored by the State Bar of Texas at The Westin Galleria. I came away from the seminar inspired to go green. Over the next few months, DLF will implement new hardware and software programs in an attempt to become a paper-less law office. We will still use paper, but our use of paper will be drastically reduced. DLF will invest in a powerful scanner, optical character recognition software, .pdf software and document management software in order to reduce all paper to digital documents. For clients, these changes will reduce costs and allow for faster delivery of documents. For DLF, it will save time and reduce storage costs. For the Earth, it means more trees!



New Outlook Add-Ons

At the seminar, I discovered new, really useful and virtually free software to augment Microsoft Outlook. The first is Anagram. This add-on will allow you to select a name, address and telephone number from an email, click a button from a menu panel and save the selected name, address and telephone number to a contact file in Outlook. The program sorts the information in appropriate places in the database with no further input by you. The software has a 45 day free trial period—after that it only costs \$29.95. You can get it at www.getanagram.com.

Another helpful Outlook tool is named Xobni. "Xobni" is inbox spelled backwards. This program analyzes relationships between emails and contacts in Outlook. In one small panel, Xobni will pull up all of the contact information for a contact, all emails sent to the contact, identify all people copied on any emails, identify all .pdf attachments sent to the contact and check the contact's Facebook page. The program is free. You can obtain it at www.xobni.com. I highly recommend both programs to you.

DISCLAIMER: This newsletter is intended to offer insurance related information and critical commentary pertinent to the clients, friends and fellow professionals of the Durrett Law Firm. It is not intended to be legal advice and does not constitute an attorney-client relationship. The information contained in this newsletter is intended to be general in nature; readers should obtain professional legal advice before undertaking any action on the basis of this material.



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Chief Justice Wallace Jefferson Calls For Abolishing Judicial Elections in Texas



Members of the Texas Supreme Court—Chief Justice Wallace Jefferson pictured in the middle of the first row.

In an article published in the February 12, 2009, Austin American Statesmen newspaper, it was reported that the Chief Justice of the Texas Supreme Court, Wallace Jefferson, delivered a plea for reform to the Texas Legislature asking it to abolish Texas' 133 year history of partisan judicial elections.

According to the article, Chief Justice Jefferson is concerned that the influence of politics and money has destroyed public confidence in justice. "If the public believes that judges are biased toward contributors, then confidence in the courts will suffer," Jefferson said.

In light of public opinion polls which reveal that more than 80 percent of Texans believe campaign contributions influence courtroom events, the Chief Justice recommends a merit selection system for the appointment of judges, with appointed judges running for re-election without opposition or without party identification.

I want to know what you think. Send me an email to bdurrett@sbcglobal.net and answer the following question: Do you believe campaign contributions to judicial elections affect courtroom events?

Next month, I will publish the results of the poll to see what our readers think about this issue.