A Newsletter Published by Durrett Law Firm

The Legal Update

POLICYHOLDER REPRESENTATION

JANUARY 2009

IN THIS ISSUE

Durrett Law Firm

2401 Fountainview Dr.
Suite 450
Houston, Texas 77057
(713) 623-6881

We Appreciate Your Business and Your Referrals

Types of Business Interruption Insurance

Whenever a disaster causes damage to business property, there is often an associated loss of income and extra expenses to the business for a period of time until the property is repaired or replaced. Property damage insurance does not protect the business owner from a loss of income or extra expenses incurred as a result of the property damage.

Insurance sold to business owners to cover these types of loss is referred to as business interruption insurance. The most common forms of business interruption insurance are business income, extra expense, contingent business interruption, dependent premises, civil authority, ingress/egress, and service interruption insurance. While there are wide variations in policy provisions, coverage and language, this article will generally examine the purpose for the different types of business interruption insurance commonly purchased.

Business Income Coverage

Perhaps the most common form of business interruption insurance is business income coverage. Business income coverage seeks to replace the lost net profits and continuing normal operating expenses incurred as a result of the suspension of business due to a covered cause of loss. For example, if a hurricane rips the roof off of your place of business and you must close for a period of time to make repairs, business income coverage would reimburse you for your lost profits and continuing normal operating expenses, including payroll. Most policies require that the business must completely cease operations and the insurance only covers loss for the "period of restoration" – the time necessary to restore the business back to pre-loss capacity. Most often, disputes with this type of coverage center upon the correct methodology for the calculation of net profits, the reasonable period of restoration, and the expenses which constitute normal operating expenses as opposed to extra expenses incurred as a result of the loss.

Extra Expense Coverage

Similar to business income coverage, extra expense coverage pays for the reasonable and necessary expenses for you to get your business running again. Examples of these types of expenses could include: moving and hauling expenses, advertising, telephone and fax communications, temporary labor, consultants, and overtime for workers. This coverage is intended to cover those extra expenses needed to minimize the loss and restore the business to its pre-loss capacity as soon as possible.

Contingent Business Interruption Coverage

Contingent business interruption coverage replaces lost income due to the business interruption of a key supplier, customer or purchaser. For example, if a hurricane causes damage to the extent that a key supplier can not provide the supplies necessary for your business, you would have a contingent business interruption claim.

Dependent Premises Coverage

A type of contingent business interruption coverage is dependent premises coverage. This insurance covers losses incurred from damage to, or acts of, civil authorities that prohibit access to dependent business premises. Dependent business premises include contributing premises (businesses that deliver materials or services to you); recipient premises (business that accept your

Continued on Page 2

Claim Denied—Tricks of the Trade
How Insurance Companies Deny, Delay, Confuse and Refuse

The **American Association for Justice ("AAJ")** has released a new 18 page report (the second in its series) condemning insurance company dirty tricks and unethical behavior in their relentless effort to boost the bottom line. The report discusses some of the most egregious ways the insurance industry attempts to make money at the expense of consumers. These methods include: intentionally denying valid claims, routinely delaying claims, causing confusion for consumers, discriminating by using credit scoring, abandoning the sick, and canceling insurance policies after receiving a mere telephone call from a policyholder.

I see variations of these practices on a daily basis. In part, it is the simple injustice of failing to honor a promise paid for by the policyholder that compels me to devote my practice to leveling the playing field against insurance companies. But when that injustice is coupled with the dirty tricks and practices employed by the insurance industry, my blood begins to boil. You can download a copy of the report at http://www.justice.org/resources/InsuranceTactics.pdf or feel free to email me and I will send you a copy.

Types of Business Interruption Insurance cont.

product or service); manufacturing premises (businesses that manufacture products for delivery to you) and leader premises (businesses that attract customers to your business).

Civil Authority Coverage

Civil authority coverage protects net profits and extra expenses incurred if your business operations are suspended due to an order of the civil authority. For example, during Hurricane Ike, the Galveston civil authorities issued an order to evacuate the island. Therefore, if you purchased this coverage and operated a business that was affected as a result of the order, you would have a claim.

Ingress/Egress Coverage

Ingress and egress coverage provides insurance against loss of net profits and extra expenses incurred when ingress to or egress from the insured premises is prevented even if the insured property is not damaged. This type of insurance might apply when hurricane force winds and flooding damage an office building lobby and common areas preventing access to offices or when physical infrastructure (roads, bridges, rail tracks, etc.) are damaged preventing ingress and egress to insured premises.

Service Interruption Coverage

Service interruption coverage provides insurance against lost profits and extra expenses when services to an insured property are interrupted. These services can include electricity, gas, water, data, phone and/or sewer services. Thus, if the electricity to your store is interrupted for a period of time preventing you from operating your business, you have a service interruption claim.

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. If you purchased this coverage and have a 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 capturing and documenting the claim to support your arguments for payment and to preserve evidence for presentation in court.

Texas Department of Insurance Looks At Mediation of Hurricane Ike Claims

According to an article published in the Houston Chronicle on December 24, 2008, the Texas Department of Insurance is considering the creation of a voluntary, nonbinding mediation program to resolve complaints between policyholders and insurance carriers arising from Hurricane Ike. The program is to be based upon similar state programs employed in Louisiana, Mississippi, Florida, California and North Carolina after various natural disasters.

I have talked with public insurance adjusters I know and trust who worked claims in states with a mediation program. Generally, they favored mediation (more than appraisal) to resolve disputes. Obviously, the devil is in the details, but the fact that it is nonbinding and has the potential to expedite claim resolution is a big plus for Texas policyholders.

When pigheadedness brought the mediation to a standstill, Malcolm employed his unorthodox, but effective, samurai technique of negotiation.

©08CharlesFincher Scirbble-in-Law at LawComix.com

Safeco Agrees To Pay $155,000 To Settle Business Interruption Claim—

after denying the claim when initially presented by policyholder.

Durrett Law Firm announces that it recently settled a business interruption claim with Safeco Insurance Company. Mr. Durrett's client is a retail store owner in the Galleria area. The store lost electricity during Hurricane Ike as a result of a damaged electrical transformer serving the retail store. The store owner timely reported the claim to Safeco. The store owner did not have service interruption coverage, but did have property and business income coverage.

Without any physical inspection or investigation of the loss, Safeco denied the claim. Mr. Durrett was able to negotiate the reopening of the claim after he proved that the power loss was caused as a result of the damaged transformer located on the premises and caused by high winds from Hurricane Ike (property damage) and not a general power outage. The client's business income coverage applied to the loss as a result of the proximity of the transformer to the store location and the fact that other stores in the center did not lose power. Mr. Durrett has successfully handled many claims against Safeco Insurance Company over the last 19 years. Despite settlement of the underlying business income claim, Mr. Durrett continues to pursue Safeco on behalf of his client for penalty interest (18% per annum on the amount of the claim) and attorney's fees under the Texas Insurance Code.

Durrett Law Firm
2401 Fountainview Dr.
Suite 450
Houston, Texas 77057
(713) 623-6881

Return Service Requested

***Our Mission is to
Level the Playing Field
Against
Insurance Companies!***

We care enough to send you the REAL DEAL!
Unlike other firms that send clients, associates, and friends an impersonal newsletter that has been created by a service, our newsletter is **100% home-grown**.
It is written and designed in-house—by us!

100% the real deal

Reader Responds To Appraisal Feature ....

Dear Mr. Durrett:

I am both a licensed public adjuster and insurance adjuster. ... I appreciate the information you transmitted through the December 2008, *Legal Update*. After reading your *Appraisal – Risky Business for Homeowners* I felt compelled to respond.

I could not concur with your opinion of the “Appraisal Process” more. Having dealt for/and against “Insurance Companies” since 1975, I must say that I feel it to be a most “unwise” choice on the part of the homeowner to even enter the appraisal process as the insurance company is at total advantage in the process due to a multitude of reasons, the least of which is the cost factor to the insured with absolutely no potential of recovery of the cost incurred in the appraisal process to the insured. It seems in virtually every instance the carrier has multitudes of “unbiased” appraisal “whores” willing to prostitute themselves for the carrier void of conscience, contractual obligatory matters, etc., often hiding behind the premise of carrier determination that “this item is not covered” thus eliminating a major item, if not several items, from the anticipated benefits the insured anticipates through the appraisal process.

In addition, many of the “insurance contracts” have been amended such that the appraisal process is no longer binding on the carrier even if agreed. Having explained this, as well as, the “upside” benefits (of which I find very few) to a client I have, never, in good faith found myself able to recommend the appraisal process to an insured. I have, over the years, found it of greater value to the client to attempt reaching agreement with the carrier by attempting agreement with the “adjuster” (whom very possibly was a “fry cook at McDonalds” three months ago). Then, if an amicable agreement cannot be reached insuring the file has been prepared in a manner such that litigation is anticipated from “day one”, the process of concluding the file can move forward through the appropriate legal channels. I have found it most advantageous to work with an attorney in virtually every instance. Recently, I have found some of the carriers receptive (for lack of a better term) [to] pre-suit mediation. This seems to move the file forward without the initiation of the inundation of discovery, interrogatives, depositions, etc. sometimes resulting in an amicable conclusion of the file without the necessity of this expense to the client. Although these costs may be necessitated by the failure of this activity I have found it well worth the effort as long as a competent attorney is at the helm, so to speak.

NAME WITHHELD BY REQUEST