



# **TOUGH LOVE**

## **Dealing with Difficult Claims Issues**

RIMS PERK Program

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# AGENDA

- Overview of Business Interruption Insurance
- Claims Process
- Tough Issues
  - Legal/Liability & Quantification
- Questions?

# OVERVIEW OF BUSINESS INTERRUPTION INSURANCE

# INTENDED PURPOSE & INHERENT ISSUES

- Put the insured in the same financial position as if no loss incident occurred
  - Takes into consideration the historical performance of the business and any knowledge of the period subsequent to the loss incident
  - Actual Loss Sustained language
- The BI coverage is a contract between the insured and the insurer to provide coverage for a limited period of time known as the indemnity period
  - Business interruption claims have a finite claim period
    - Due Diligence & Dispatch
    - Possible Arbitrary cutoff (12 months)
    - Extended Period of Indemnity (EPI)
- Losses are continuing to become more complex and insurance policies do not always contemplate current scenarios.

# THE CLAIMS PROCESS

# THE CLAIMS PROCESS & COMMON ISSUES

- Initial considerations for special circumstances
  - Alignment of Multiple Policies/Layers & Adjusters
  - Loss Preceding Upcoming Renewals
  - Wide area damage
- Decisions to be made early on in the process:
  - Workforce continuance/Ordinary Payroll
  - Temporary location feasibility
  - Re-build as was, replace elsewhere or differently, or cash out (ACV)
- Communication with Adjuster
  - Give clear understanding of operations > the Insured is the expert at their business
  - Ensure sufficient loss reserve is set
  - Get buy in on major decisions

# THE CLAIMS PROCESS & COMMON ISSUES

- Preparation of supporting documentation/claim compilation
  - The Insurer will demand support to make payments
  - A claim audit is not the same as a year end audit
    - Materiality is not a determining factor in documenting claims
    - Sampling can be appropriate in certain circumstances
- Advance payments
  - Timing
  - Typical hold-backs
    - Hard Costs versus BI
- Response to insurance company requests
  - Endless requests/questions from insurance company consultants
  - Documentation prepared in the ordinary course of business
- Claim settlement meetings/negotiations
  - Unreasonable expectations for recovery

# TOUGH ISSUES



# TOUGH ISSUES - Quantification

## CASE EXAMPLE: COVID Effect on Non-COVID Claims

- Claims filed pre-COVID vs. claims filed post-COVID
  - Availability of COVID affected projections/budgets
  - Considerations for resumption of operations
- Changes in Market Conditions
  - Inclusion determined by jurisdiction
    - Rulings to exclude COVID influence from loss calculations
  - Demand changes
    - Shutdowns & re-openings in various jurisdictions
    - Essential versus non-essential products
  - Pricing changes
  - Competition changes

# TOUGH ISSUES - Quantification

## CASE EXAMPLE: COVID Claims

- Coverage
  - Civil Authority Orders
    - Does each shutdown for quarantine & cleaning trigger a new loss period?
  - Cancellation Coverage for Hospitality industry
  - Communicable Disease Exclusion
- Sales Projections
  - Reliance on budget? Industry data? Historical Operations? Historical Sales? Production Projections?
  - Idle Periods & Expected Shutdowns
  - Appropriate base period
  - Pre- and post-loss performance relative to competitors
- Changes in Market Conditions
  - COVID is the cause so are COVID effects on the market excluded?

# TOUGH ISSUES - Quantification

## CASE EXAMPLE: Cyber

- Interplay between Property Cyber Coverage and Kidnap, Ransom & Extortion Crisis Policy
- Short loss periods and lack of daily information
- Damages include legal, temporary security consultants, forensic analysts, penalties, property damage, lost profits, incremental costs including overtime, travel and expedited freight
- Deliberate or accidental causes
- Hitting all industries - professional services, health care, manufacturing, retail/wholesale companies, etc.

# TOUGH ISSUES - Quantification

## CASE STUDY: Wildfires

- Coverage for Trees / Vines
  - Triggers debris removal of insured property
  - Reforesting / Replanting
- No direct physical damage
  - Civil Authority
  - Ingress/Egress
  - Contingent Business Interruption

# TOUGH ISSUES - Quantification

## CASE EXAMPLE: PRODUCT RECALL

- Traceability - Documenting the contaminated product was subject to the recall through the review of receiving, production, sales and inventory records.
- Aligning multiple policies with varying exclusions and sub-limits to maximize recovery.
- Compiling relevant and detailed supporting documentation to withstand insurer scrutiny. For example, retailer deductions, need to know product description, quantity, and unit price for all deductions.
- Handling situations where excess quantities are destroyed as compared to sold or similar products within same product line not recalled are destroyed.
- Handling multiple third-party liability claims with complex claims including lost profits.
- General valuation issues including inventory replacement costs and lost profits.

# TOUGH ISSUE - Legal / Liability

## CASE EXAMPLE: Indemnity Periods

- Due Diligence & Dispatch
  - Adjusters look to exclude delays (real or perceived)
  - Hindsight is 20/20
- Extended Period
  - Begins with the date when the business is resumed after POI & any delay periods are over
  - Complicated by changes in market conditions
- Make-up production
  - Consists of sales that exceed expectations after operations are restored
  - Can be difficult to bifurcate post-loss sales that were deferred v. those that would have occurred anyway
  - Seasonality can exacerbate the issue
  - Understanding customer behavior is key to recognizing cause of increased sales

# TOUGH ISSUES - Quantification

## CASE EXAMPLE: Planned Changes in the Insured's Business Model

- Include changes like:
  - Sales/advertising campaigns
  - New products or product lines
  - Cost reduction initiatives.
- Can be difficult to document because:
  - May not be budgeted or lack historical track record
  - May not be measured with specificity
  - May be impacted by timing of loss.

# TOUGH ISSUE - Quantification

## CASE EXAMPLE: Deductible Calculations

- Waiting period deductibles
  - Applies to Business Interruption
  - Can apply to Extra or Expediting Expenses
  - Must be exceeded before any loss can be measured
    - Once exceeded, may allow to go back to first day
- Average Daily Value Deductibles
  - Defined within policy language
    - Annual versus Loss Period
    - Consolidated company versus Insured location



# TOUGH ISSUE - Legal / Liability

## CASE EXAMPLE: Non-covered Factors Contributing to Loss

- Idle periods
- Intervening uncovered perils
- Exclusion for remote or consequential losses
- Degree of remoteness and consequentiality often causes disagreement

QUESTIONS?



# QUESTIONS

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