Managing a Complex Business Interruption Claim and Fidelity Claim

RIMS Rocky Mountain Chapter
Educational Session
November 15, 2018

BRG
Berkeley Research Group

AGENDA

- Introduction
- Pre-Loss Preparation
- Business Interruption Values
- Best Practices to Handle a Claim
- Important Extensions of Coverage
- Key Strategies for Claim Settlement
- Employee Dishonestly Claims
- Closing and Q&A

BRG
Berkeley Research Group

Pre-Loss Preparation

Set Expectations

- Review insurance policy (Contract)
- Ensure Accurate PD and BI values
- Establish claims reporting, accounting and management protocols
- Identify centralized leadership with local, national and global coordination
- Build your team

Establish a ClaimsTeam

BRG
Berkeley Research Group

It is important for the Insured to establish a team of professionals representing its own interests before a loss.

Internal

- **Risk Manager**
- **Operations Management**
- **Financial Management**

External

- **Insurance Broker**
- **Forensic Accountant**
- **Engineer/Contractor**
- **Coverage Counsel**

- **Named Adjuster ***

***A pre-determined Adjuster may be named in a policy which the Insured and Insurer agree upon**

BRG
Berkeley Research Group

Brief Discussion of Business Interruption Values

Business Interruption Values Considerations

BRG
Berkeley Research Group

- Do Business Interruption (BI) Values accurately reflect the exposure?
- Certain revenue streams may not be at risk from physical disruption. Conversely, certain revenue streams may be at risk when there is no physical disruption to the Insured's premises.
- Will Business Continuity Plans (formal or informal) reduce your BI loss? If so by how much? If not, should you adjust the values declaration?
- Should you report BI values for data centers? Call centers? Corporate HQ? Distribution Centers? If so, how much? If any of these services are provided by outsourced providers, is your CBI limit adequate?
- If you have percentage deductibles, do you know to what value that percentage will be applied in the event of a loss?

BRG
Berkeley Research Group

Best Practices to Handle a Claim

Loss Activity & Priorities

Berkeley Research Group

Insured

Insurer

Site stabilization & employee safety

Engage Claims Team

Obtain initial read on scope of damage

Implement Contingency Plan

Request Advance Payment

Provide notice

Confirm extent of insurance coverage to management

Days

Weeks

Months

Cause & Origin

Liability Determination/ Subrogation

Setting of Loss Reserve

Review Mitigation Plan

Salvage Assessment

KEY EARLY STEPS

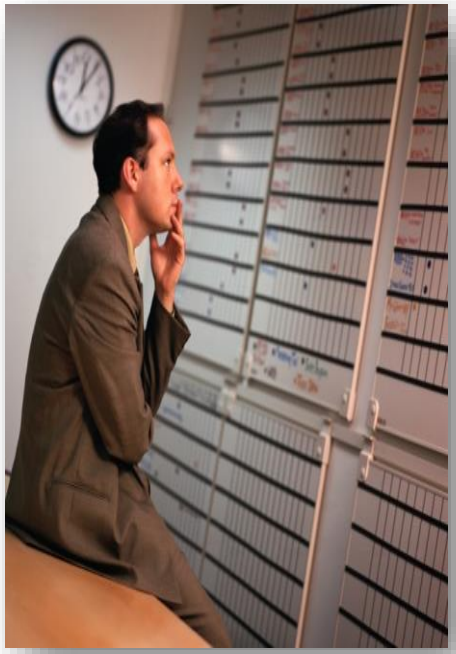
Berkeley Research Group

- Request on site visit by adjuster ASAP and then assume responsibility of measuring your own claim with your contractors, engineers, etc.

- Form a "Claim Preparation Strategy"
- Review insurance coverage in detail with Insured and Forensic Accountant
- Work with Management to mitigate BI loss
  - Schedule regular meetings with adjuster and representatives
  - Initiate discussions with adjuster for an interim cash advance and provide support
  - Develop and communicate re-build plan / period of restoration plan to adjuster
  - Obtain authority to incur extra expenses without an item by item approval

ONGOING STRATEGIES

- Do not lose sight of the fact that an insurance claim is a cooperative and adversarial process at the same time
- Take initiative – the team prepares the claim not the insurer and be prepared to support the position
- Regular Interim Claim Submissions, eliminate surprises
- Segregate factual issues from judgment issues
- Consider viewpoint of insurer – “Devil’s Advocate” while at the same time understand the strengths & weaknesses of the claim (have reasonable expectations)
- Prevent adversarial situations throughout the process; resolve differences item by item; agree to disagree and move on; resist time pressures



POTENTIAL BI CHALLENGES

BRG
Berkeley Research Group

- Attributing business interruption income loss to direct physical damage
- Ordinary course of business forecasts
- Trending historical results, budgets, etc. ("But For" the loss)
- Period of indemnity performance and necessity of continuing expense
- Market/economic conditions
- Comparables
- "Make-up" sales and other offsets

An Insured's future revenues and profits are inherently unpredictable. The earnings of the business before the date of damage and the probable earnings thereafter, had no loss occurred, is complex and can lead to differences.

BRG
Berkeley Research Group

Important Extensions of Coverage

Insurance Coverage Available to Consider

Berkeley Research Group

- Contingent business interruption*
- Civil Authority*
- Off premises service interruption including overhead transmission lines*
- Ingress/Egress*
- Extended period of indemnity
- Ordinary payroll coverage

- Inventory at selling price vs. cost
- Loss of Attraction Property
- Extra Expense
- Pollution
- Clear language on trigger for extensions of coverage
- Claim preparation fee coverage

*** Direct property damage not required**

Contingent Time Element

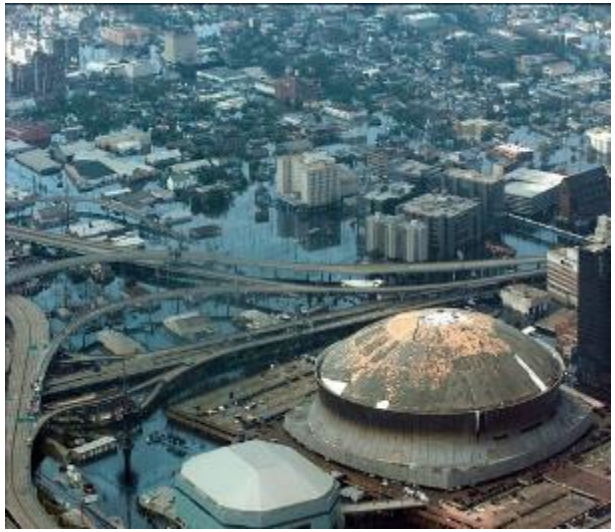
- Increasingly relevant as supply chains become more complex and operate with slimmer inventory

- Important to identify different types of suppliers and applicable policy limitations
  - Direct
  - Tier 1 / Tier 2 customers or suppliers
  - “Scheduled” customers/suppliers
  - Watch for territorial limitations

- Try to include ALL suppliers and customers → If this is unavailable, ***DOCUMENT*** the limitations and communicate to stakeholders

Service Interruption

- Type of utility power
- Transmission & distribution lines
- Distance requirement
- Deductibles/waiting period
- Sublimit
- Peril that caused the service interruption may not be covered by policy (cyber)
- Make sure coverage includes:
  - PD & time element
  - All utility services (steam, water, air, and telecom)



Extended Period of Indemnity Issues

- Often only applies to BI
- Should be extended to other time element coverages:
  - Service interruption
  - Extra expense
  - Contingent BI
- Consider special wording for FDA or other regulatory body to allow for recertification by regulator
- Make sure you have an appropriate extended period duration (90, 180, 365 days)

Ordinary Payroll

- When is it appropriate to cover ordinary payroll?
  - When contractually required
  - Skilled /Semi-skilled labor
  - Other?
- Match reported values with coverage
- Consider union obligations and international laws if operations are global

BRG
Berkeley Research Group

Key Strategies for Claim Settlement

Claims Settlement Process

Berkeley Research Group

During the resolution-claim settlement process, it is important to:

Set appropriate expectations

Understanding the options

- **Compromise**
- **Appraisal**
- **Litigation**

Understand unique facts and circumstances surrounding the claim and the policy

BRG
Berkeley Research Group

“Crime Pays”: Recovering Employee Dishonesty Claims

"Crime Pays": Recovering Employee Dishonesty Claims

2016 Report to the Nations

- Study conducted by the Association of Certified Fraud Examiners
- 2,410 cases examined around in 114 countries (1,038 in the U.S.)
- Estimated ***$3.7 Trillion*** in losses based on estimated 2014 Gross World Product
- CFE's estimate that occupational fraud amounts to 5% of gross revenues each year
- Median loss caused by occupational fraud was $150,000
- 23% of cases involved losses of at least $1 million (from 20% in 2012)
- Typical fraud lasted18 months; 25% were discovered in first 6 months
- Detection typically by **tip** (39%), with internal audit at only 16%
- Presence of Anti-Fraud controls caused lower losses/quicker detection
  - Hotlines, surprise audits, anti-fraud training

Source: Association of Certified Fraud Examiners, 2016 Report to the Nations

What to Do When Suspicions Arise and the Adjustment Process

Berkeley Research Group

Locate & Read Policy

Conduct Pre-Notice investigation

Engage Claims Team

Contact Law Enforcement

Establish Quantum (Damages)

Insurer Investigation and Audit

Days

Weeks

Months

Establish Facts (Liability)

Give Notice to Crime and/or Property Carrier

Note Time to File Proof of Loss

Conduct Thorough Investigation

File Sworn Proof of Loss)

Reconciliation of Issues and Negotiate Settlement

Damages, Quantification and Preparing the Proof of Loss

- **Insurers have no incentive to pay "estimates"**
  - Find creative ways to quantify damages
    - Use historical trends
    - Identify statistical anomalies
    - Prepare to defend any assumptions
    - Calculate -- do not estimate

- **When is "enough" evidence enough?**
  - Recognize that the insurer will incur considerable expense to validate and develop facts
  - Proof must be objective, credible, and persuasive
  - However, a comprehensive recitation of all facts is not required

Expect Pushback

- **Typical Conditions Defenses**
  - Failure to give prompt notice of loss
  - Prejudice subrogation rights
  - Failure to disclose prior acts of fraud or dishonesty
  - Involvement of officers in the fraudulent scheme
  - Failure to prove "manifest intent"
- **Typical Damages Defenses**
  - Loss not fully documented or proven
  - Claim includes indirect, consequential, or excluded losses (e.g., potential income)
  - Loss does not reflect credits for recovery

SUMMARY

- Plan
- Communicate
- Remember insurance policies are contracts with many clauses requiring a degree of professional analysis, estimates or calculations
- Having the right detailed documentation is critical to a timely and satisfactory settlement of a claim
- Working with an experienced team of professionals can narrow disagreements from becoming contentious issues

BRG
Berkeley Research Group

Closing and Questions

Robert Glasser, CPA, CFE, CIRA, CFF
Managing Director, Business Insurance Claims

Berkeley Research Group (BRG)
810 Seventh Avenue
New York, NY 10019
rglasser@thinkbrg.com
516-998-6310