

# COMPLEX BUSINESS INTERRUPTION CLAIMS: WHAT TO DO WHEN DISASTER STRIKES

(CLM005)

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# Learning Objectives

**At the end of this session, you will:**

- Understand key BI insurance policy provisions
- Be prepared to develop a good paper trail
- Identify/address pitfalls during the claims process
- Identify key third parties
- Understand how to manage internal communications

# Are You Covered?



# Business Interruption Coverage Grant

We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your “operations” during the “period of restoration.” The suspension must be caused by direct physical loss of or damage to property at the described premises in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss.

# Period of Recovery - ISO Form

## Defined Period of Restoration:

Begins on date of loss

Ends when damaged property should be repaired or replaced with reasonable speed and similar quality or with due diligence and dispatch.

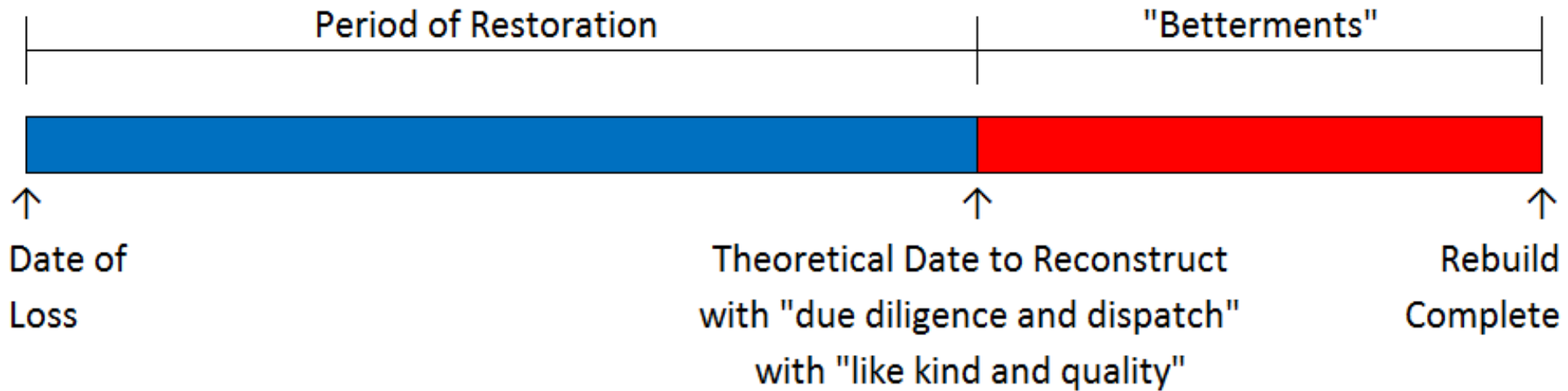
# Period of Recovery - ISO Form

- **Extended Business Income/Extended Period of Indemnity:**

- 1) Begins on the date property is actually repaired or replaced and operations are resumed.
- 2) Ends on the earlier of the date operations could be restored to the level that would have existed if no direct physical loss or damage had occurred, or "X" consecutive days after the date determined in (1) above.

However, Extended Business Income does not apply to loss incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

# Sample Timeline - Period of Restoration

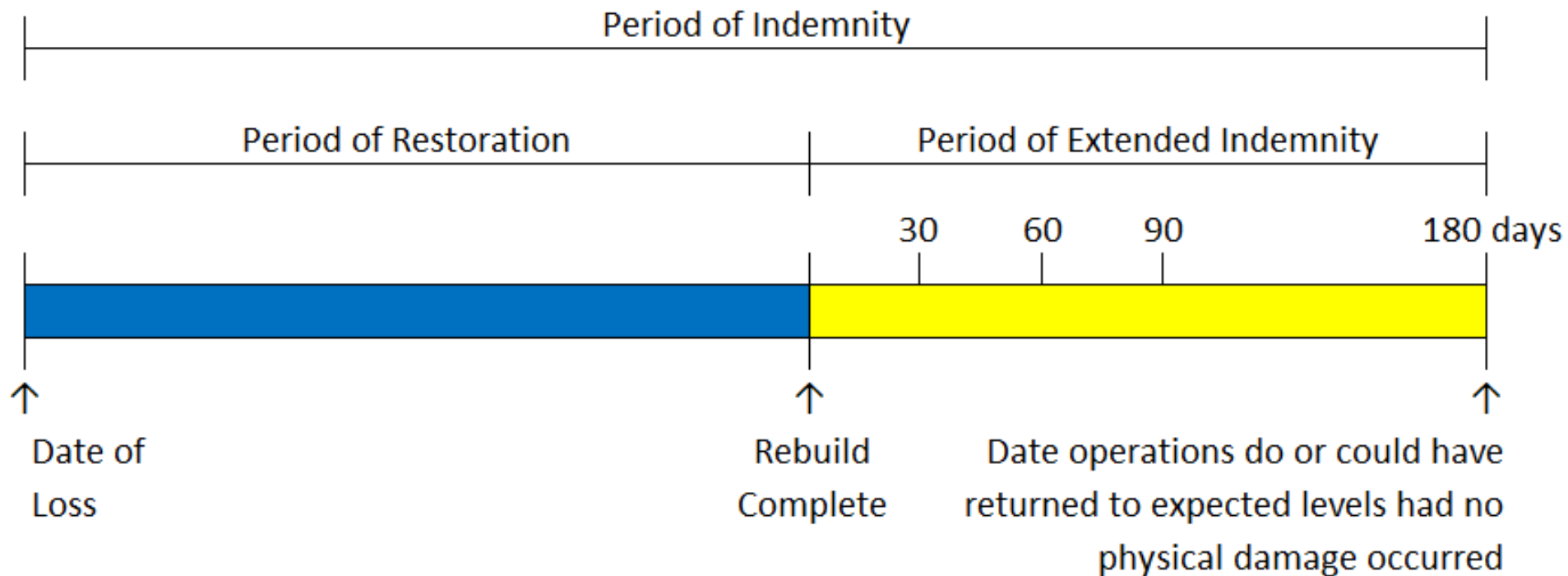




# Periods of Indemnity

- **Period of Restoration**
- **Extended Period of Indemnity**
  - Can be Specified (normally between 30 and 180 days; some can be 365 days)
  - Should be driven by your industry/operations
- **Other Indemnity Period Issues**
  - Extra Expense (Covered during all periods of indemnity?)
  - Ordinary Payroll

# Sample Timeline - Period of Extended Indemnity



# Coverage Enhancements

- **What is Available in the Market?**
- **Key Differences in Policy Language of Enhancement**
  - Material differences in wording depending on insurer
  - Wording Specific to Your Known Risks
- **The Good, The Bad and the Tricky policy wording**
- **Work with and Involve Your Insurance Broker**

# Coverage Issues

- **Destruction of property vs. loss of use**
- **Total suspension vs. partial interruption**
- **Described property vs. any property**
- **Period of restoration/extended period of indemnity**
- **Business interruption supplemental coverages**
- **Time periods (proof of loss/suit limitation)**

# BI - Supplemental Coverages

- **Civil Authority**
- **Ingress/Egress**
- **Dependent Property**
- **Service Interruption**
- **Contingent Business Interruption**
  - Suppliers
  - Customers
  - Direct and/or Indirect

# Civil Authority Provision

- “This policy is extended to insure loss sustained when, as a result of a loss, damage or event not excluded hereunder, access to property is impaired [or prohibited] by order or action of civil or military authority.”

# Ingress/Egress Provision

- **“This policy is extended to cover loss when, as a result of loss or damage insured against, ingress to or egress from the premises is impaired [or prevented] irrespective of whether the premises or property of the Insured shall have been damaged.”**

# Contingent BI Provision

- **“This policy also insures against loss resulting from damage to or destruction, by the perils insured against, of property that directly prevents a supplier of goods and/or services to the Insured from rendering their goods and/or services, or property that directly prevents a receiver of goods and/or services from the Insured from accepting the Insured's goods and/or services.”**



# Service Interruption

- Coverage for loss due to lack of incoming electricity caused by damage from a covered cause to property away from the insured's premises—usually the utility generating station. Also referred to as "off-premises power coverage." Not provided in a standard property insurance policy, but available by endorsement. Utility service interruption coverage endorsements vary widely as to what utilities are included, whether both direct damage and time element loss are covered, and whether transmission lines are covered.

# "Dependent Property" Provision

- **“The insurance policy is extended to apply to such loss sustained by the Insured due to direct physical loss or damage by the perils insured against to property at the premises of a ‘dependent property.’”**
- **“Dependent Property” means property operated by others that the Insured depends on to . . . attract customers to the Insured's business (Leader locations).**

# Demolition and Increased Cost of Construction

- **Language of Endorsement**

“In the event of loss or damage by an insured peril under this policy that causes the enforcement of any law or ordinance regulating the construction or repair of damaged facilities ... underwriters shall be liable for the increased cost of repair or reconstruction of the damaged and undamaged facility on the same or another site ....”

# The DICC Endorsement Policyholder Position

- Endorsement adds back coverage for losses excluded by so-called “Law and Ordinance” exclusion -- covers costs and time element losses associated with bringing building or equipment into regulatory compliance where code violations were discovered as a result of the covered loss.

# The DICC Endorsement Insurer Position

- **DICC Endorsement does not cover costs and time element losses associated with bringing building or equipment into regulatory compliance because this would encourage businesses to wait until there is a huge fire or explosion to try to get coverage to upgrade facilities to bring them into code compliance.**

# The DICC Endorsement Recent Court Decisions

- **NJ state appellate court found coverage for cost to demolish/repair walls on undamaged floors; connection between the collapse of wall on damaged floor & mandate that policyholder repair walls on undamaged floors.**
- **Federal appellate court found no coverage where federal pipeline agency shut down a pipeline after a catastrophic loss; court felt that it gave policyholders an incentive to neglect their insured property and the policy would amount to a “maintenance contract”.**

***BOTTOM LINE -- LITIGATION VENUE MATTERS!***

# After the Loss – What Now?

- **Notice of Claim**
- **Proof of Loss**
- **Appraisal Condition**
- **Suit Limitation Condition**

# After the Loss – What Now?

- **Potential Exclusions (e.g. loss of market)**
- **Burden of Proof (coverage vs. exclusions)**
- **Quantification/Valuation of Losses and Expenses**
- **BI Values**
- **Mitigation Costs**
  - Expenses to Reduce the Loss (including Expediting Expenses)
  - Extra Expenses



# Post Loss – Economic Considerations

- **Partial Payments (Cash Advances)**
  - Property Losses
  - Business Income and Extra Expense
- **Tracking/Documenting and Proving Your Loss**
  - Loss Accounting System
  - Claims Presentation
- **Keeping the CFO Happy**
  - Communicating the Claims Process
  - What can be reported on your financials and when?

# Post Loss – Legal Considerations

- **If you have a pending claim, you may be facing a “suit limitation condition” issue**
  - Property/business interruption insurance policies contain a policy condition which requires that any suit against the insurance company be filed within 1, 2 or 3 years after the date of loss.
- **Most policy provisions provide for a 2 year limitation on filing suit from the date of loss**
- **Generally speaking, these time limitations can be extended by the insurance company**
  - But, the extension should be confirmed in writing with the insurance company

# Post Loss – Best Practices

- **Read The Policy & Note the Following:**
  - Timing (Notice, Proof of Loss, Suit Limitation Conditions)
  - Available Coverages and Applicable Deductibles (including time deductibles)
  - Exclusions
  - Limits and Sub-limits (for both dollars and time periods)
- **Establish a Multi-Functional Team:**
  - Risk Management/Business Continuity
  - Accounting/Finance
  - Marketing/Public Relations
  - Operations
  - Legal

# Lessons Learned from Recent Disasters

- **Windstorm v. Flood (Storm Surge)**
  - Thailand storms
  - Recent PSE&G decision in New Jersey
- **Earthquake v. Flood**
  - Japan earthquake/tsunami – March 2011
- **Sub-limits/deductibles**
  - 9/11
  - Hurricane Katrina/Super Storm Sandy
- **Service Interruption (Off-Premises Coverage)**
  - Super Storm Sandy

# Post Loss – Best Practices

- **Control the process!**
- **Danger of insurance company running with the claim process**
  - Understanding the impact to your business
  - Reserve Setting
  - Decision Making
  - Settlement Strategy

# Key Take-Aways

- Keep your policies, limits/sublimits and endorsements up to date with the changes/growth in your business.
- Discuss anticipated issues with a major interruption with operations, finance and marketing immediately following a loss and throughout the recovery period.
- Make sure your team makes the best BUSINESS decisions while understanding the impact to the insurance claim recovery process.

# Key Take-Aways

- Control the process – start to finish after a loss
- Create a post-loss check list – BEFORE the loss happens (include contact information for reporting the loss to your broker/insurance company)
- Keep a list of potential 3<sup>rd</sup> party recovery team members (coverage attorneys, forensic accountants, consultants, etc.)
- Establish an internal loss recovery team, and be sure the team understands how the process works (i.e. what can and can't be claimed and how long it takes to get paid)

# Rubes®

By Leigh Rubin





# Questions?