“Am I Covered...?”

Rhode Island Long Term Care Mutual Aid Plan
2015 Annual Conference

Presented May 7, 2015 by:

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BB&T Insurance Services
Senior Living Practice Leader
“Risk Handling” is the set of steps we take to “control” and “finance” risk.

Objectives

- Segment 1 – “Am I Covered…?” (7 Steps to answer this question)
- Segment 2 – Case: Business Interruption
- Segment 3 – Case: Workplace Violence

Disclaimer: All comments / slides are for general discussion and education and should not be understood as an interpretation of any specific insurance policy.
When Insuring A Business...

- Protection For Your Assets
- Liability to Others
- Wellness Of Your People

Property Insurance

Protection of Your Assets

- What is the “object” of our coverage?
  - Buildings
  - Business Personal Property
  - Business Interruption (Cash flow from a covered event)

- What are the perils that are to be covered?
  - Named Perils
  - All Perils unless Excluded
“Standard” Property Insurance Example

<table>
<thead>
<tr>
<th>Object of Coverage</th>
<th>Fire</th>
<th>Wind</th>
<th>Physical Theft</th>
<th>Electronic Theft</th>
<th>Flood</th>
<th>Earthquake</th>
<th>Spilled Paint</th>
<th>Deer</th>
<th>Cryoseism</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Building &amp; Business</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
<td>?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personal Property</td>
<td></td>
<td></td>
<td></td>
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<td>Unless Excluded:</td>
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<td>• Property of Residents</td>
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<tr>
<td>• Cash</td>
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<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>2. Business Interruption</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
<td>?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: There must be covered physical damage in order for the claim to be covered.

A Common Question - “Am I Covered...?”

1. Is the “object” of the “coverage” included?
2. For what perils?
3. At What Limit?
4. Does A Deductible Apply?
5. Exclusions?
6. Definitions
7. Any special conditions?
### Typical Property NOT Automatically Included

<table>
<thead>
<tr>
<th>Item</th>
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<th>Item</th>
</tr>
</thead>
<tbody>
<tr>
<td>Currency</td>
<td>Animals</td>
<td>Personal Property of Employees</td>
</tr>
<tr>
<td>Property owned by resident, patient, student</td>
<td>Foundations</td>
<td>Contraband</td>
</tr>
<tr>
<td>Crops / standing timber</td>
<td>Outdoor trees, shrubs, plants, lawn</td>
<td>Land</td>
</tr>
<tr>
<td>Vehicles</td>
<td>Property “more specifically covered elsewhere”</td>
<td>Retaining Walls</td>
</tr>
<tr>
<td>Underground pipes</td>
<td>Aircraft / Watercraft</td>
<td>Property in the open</td>
</tr>
</tbody>
</table>

*Note: This sample list will vary by policy*

### Typical Excluded Perils

<table>
<thead>
<tr>
<th>Item</th>
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<th>Item</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ordinance or law</td>
<td>Earthquake</td>
<td>Government Action</td>
</tr>
<tr>
<td>Nuclear Hazard</td>
<td>Off site Utility Failure</td>
<td>War &amp; Military Action</td>
</tr>
<tr>
<td>Water, flood, mudslide</td>
<td>Settling, cracking, shrinking, expansion…</td>
<td>Inventory Shortage</td>
</tr>
<tr>
<td>Employee dishonesty</td>
<td>Frozen plumbing in buildings not maintained appropriately</td>
<td>Off-site or in transit losses</td>
</tr>
<tr>
<td>Special computer-related perils</td>
<td>Sewer and drain backup</td>
<td>Terrorism</td>
</tr>
<tr>
<td>Fungi, mold…</td>
<td>Wind driven rain</td>
<td>Boiler explosion, mechanical breakdown</td>
</tr>
</tbody>
</table>

*Note: This sample list will vary by policy*
Case: Business Interruption

“Business Interruption” Insurance – “Part II” of the Property Policy covers the:

- continuing expenses,
- loss of net income (profit/loss) and
- extra expenses associated with the loss

Be careful of interpreting the term “Business Interruption” too broadly!

- All “Business Interruption” is not covered by a “Business Interruption Policy”
- There must be physical loss by a covered peril.
  - Fire
  - Flood
  - Reputation
  - Evacuation

Case: Business Interruption Claim

Case: A fire occurs at a nursing home while testing a generator, leading to

- severe damage to the kitchen and 1 of 3 wings of the building (and contents)
- Smoke damage (60% of the facility is ultimately damaged in some way)
- Residents displaced / transferred to other communities in the area
- Facility must close for 18 months to completely rebuild (local code required the tear down of an undamaged portion of the building)
- A major press event follows drawing attention to the topic of “facility preparedness”
Business Interruption Case – Am I Covered?

1. Is the “object” of the “coverage” included?
   - Business Interruption
     a. Net Income – (profit or loss)
     b. Continuing Operating Expenses
     c. Extra Expenses

2. For what perils?  Fire (it wasn’t excluded)

3. At What Limit?  $8,500,000 / 90 Days of Payroll / Reasonable Rebuild Time + 90 Days Extended Period of Indemnity

4. Does A Deductible Apply?  72 hours

5. Exclusions?  See policy

6. Definitions  See policy – (i.e. “Period of Restoration”, …)

7. Any special conditions?  See policy – (i.e. Coinsurance, Valuation, New Location, Duties in the event of a loss, …)

Sample Business Interruption Worksheet

A. Projected Net Annual Profit:  (Show $0 if budgeting for a loss)  $ 1,600,000

B. Add Projected Annual Continuing Expenses:  (Add others as applicable to the extent that they would continue after a total or partial loss)
   1. Mortgage Payments  $ 850,000
   2. Lease Payments on Building  $ -
   3. Physical Plant Costs  $ -
   4. Cost of Utilities  $ 275,000
   5. Loan payments on autos, equipment or furnishings  $ 50,000
   6. Real Estate Taxes  $ -
   7. General & Administrative Expenses  $ 25,000
   8. “Key Employee Payroll” includes Officers, Executives, Department Managers, Employees Under Contract and other “Key Employees.”  $ 500,000
   9. Other contractual commitments that will continue  
   10. Other Continuing Expenses - (please note separately)  
   11. Management Fees  $ 600,000
   12. Insurance - Property and General Liability  $ 50,000
   13. Other Continuing Expenses  $ 100,000
   
B. Total Continuing Expenses:  $ 2,450,000

Annual Business Income Exposure (A+B):  $ 4,050,000

C. Time Period from Point of Loss until Certificate of Occupancy Granted to Reoccupy (in Months)  18  $ 6,075,000

D. (Optional) Other Payroll Exposure -  (Available in 90 day increments)  90  $ 1,375,000

E. Extended Period of Indemnity:  (List # of days that coverage is desired AFTER re-occupancy permit) -  (Available in 90 day increments)  90  $ 506,250

F. Extra Expenses  $ 75,000

TOTAL:  (C+D+E+F)  $ 8,081,250
Sample Business Interruption Worksheet

A. Projected Net Annual Profit: (Show $0 if budgeting for a loss) $1,600,000

B. Add Projected Annual Continuing Expenses: (Add others as applicable to the extent that they would continue after a total or partial loss)

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1. Mortgage Payments</td>
<td>$850,000</td>
</tr>
<tr>
<td>2. Lease Payments on Building</td>
<td>$-</td>
</tr>
<tr>
<td>3. Physical Plant Costs</td>
<td>$-</td>
</tr>
<tr>
<td>4. Cost of Utilities</td>
<td>$275,000</td>
</tr>
<tr>
<td>5. Lease/Loan payments on autos, equipment or furnishings</td>
<td>$50,000</td>
</tr>
<tr>
<td>6. Real Estate Taxes</td>
<td>$-</td>
</tr>
<tr>
<td>7. General &amp; Administrative Expenses</td>
<td>$25,000</td>
</tr>
<tr>
<td>8. &quot;Key Employee Payroll&quot; includes Officers, Executives, Department Managers, Employees Under Contract and other &quot;Key Employees.&quot;</td>
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<td>9. Other contractual commitments that will continue</td>
<td></td>
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<td>13. Other Continuing Expenses</td>
<td>$100,000</td>
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B. Total Continuing Expenses: $2,450,000

C. Time Period from Point of Loss until Certificate of Occupancy Granted to Reoccupy (# Months)

<table>
<thead>
<tr>
<th>Time Period from Point of Loss until Certificate of Occupancy Granted to Reoccupy (# Months)</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>18 Time Period from Point of Loss until Certificate of Occupancy Granted to Reoccupy</td>
<td>$6,075,000</td>
</tr>
</tbody>
</table>

D. (Optional) Other Payroll Exposure - (Available in 90 day increments)

<table>
<thead>
<tr>
<th>(Optional) Other Payroll Exposure - (Available in 90 day increments)</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>90 (Optional) Other Payroll Exposure - (Available in 90 day increments)</td>
<td>$1,375,000</td>
</tr>
</tbody>
</table>

E. Extended Period of Indemnity: (List # of days that coverage is desired AFTER re-occupancy permit) - Available in 90 day increments.

<table>
<thead>
<tr>
<th>Extended Period of Indemnity: (List # of days that coverage is desired AFTER re-occupancy permit) - Available in 90 day increments.</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>90 Extended Period of Indemnity: (List # of days that coverage is desired AFTER re-occupancy permit) - Available in 90 day increments.</td>
<td>$506,250</td>
</tr>
</tbody>
</table>

F. Extra Expenses

<table>
<thead>
<tr>
<th>Extra Expenses</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$75,000</td>
</tr>
</tbody>
</table>

G. TOTAL: (C+D+E+F)

<table>
<thead>
<tr>
<th>TOTAL: (C+D+E+F)</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$8,031,250</td>
</tr>
</tbody>
</table>
Key Business Interruption Concepts:

- Complete your worksheet from the perspective of a major / loss (even though a minor/partial loss is statistically more likely.)

- A – Include Anticipated Annual Profit (The policy is designed to make you “whole” less your deductible when constructed correctly.)

- B – Anticipate all of the annual expenses that would continue after a loss – (you may have others in addition to those indicated – see line 13)

- C – Pro-rate the sum of A & B to contemplate the period of time from loss to when you “should reopen / get Certificate of Occupancy”
  - Buried in the definition section is the term “Period of Restoration.” This is where you find your deductible (72 hours) and the end of the coverage term which is the “earlier of … the date the property should be repaired, rebuilt or replaced with reasonable speed… or… the date business resumes at a new permanent location…”

- D – Payroll is its own conversation to consider.
  - In general, as your largest expense, there are some careful considerations to be made as you may not be able to keep everyone on payroll if you have to close for a long period of time.
  - This is a major topic in business interruption limit setting and is beyond the scope of what we can cover today.

- E – Extended Period of Indemnity – This is the endorsement that is used to extend coverage from when you “reopen” (or should have) to the point where you are back to “pre-loss” occupancy. (Generally provided in 90 day increments)

- F – Extra Expenses – necessary expenses that you incur during the period of restoration that you would not have incurred if there had been no direct physical loss or damage to the property
Key Business Interruption Concepts:

- The policy limit does not have to be the total of C,D,E & F; however, this will help you identify a likely worst case scenario. Anything short of this that you purchase would be actively self-insured.
- The concept of “Coinsurance” is a critical concept to understand and manage.

\[
\text{Limit that you DID purchase} / \text{Limit that you SHOULD have purchased (according to the fine print)} \times \text{Loss Amount} \\
\text{- Deductible} \\
\text{= Insurance Coverage Provided}
\]

- This is a significant penalty for underinsuring embedded in the fine print and you must get it waived by adding an “Agreed Amount” endorsement to your policy.

Case: Workplace Violence

- A nursing home has an Active Shooter incident:
  - Estranged spouse entered facility looking for his former wife – shot and killed 8, wounded a 9th as well as the officer who ultimately stopped him
  - Who was (or could have been) injured?
    - Employee – (Workers Compensation)
    - Guest – (General Liability)
    - Residents – (Medical Professional Liability)
  - Am I Covered?
    - What am I concerned about? What do I need coverage for?
### Survey of Other Exposures from Incident

<table>
<thead>
<tr>
<th>Event</th>
<th>Coverage Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Liability to family members and injured parties, extended family for medical bills, compensatory damages, paid and suffering, punitive damages ... from negligence resulting in death</td>
<td>General &amp; Medical Professional Liability</td>
</tr>
<tr>
<td>Employee Death</td>
<td>Workers Compensation</td>
</tr>
<tr>
<td>Evacuation</td>
<td>Not necessarily covered unless purchased by endorsement OR provided by an insurer who specializes in covering nursing homes and anticipates these exposures.</td>
</tr>
<tr>
<td>Media / Public Relations Response</td>
<td></td>
</tr>
<tr>
<td>Damage to Reputation</td>
<td></td>
</tr>
<tr>
<td>Psychiatric First Aid</td>
<td></td>
</tr>
<tr>
<td>Clean up</td>
<td></td>
</tr>
</tbody>
</table>

- These are generally “first party” exposures.

### Endorsements Are Available

- Insurers who write this type of coverage periodically try to improve forms for competitive purposes.
- These endorsements can provide “first party” cover
  - Not necessarily triggered by “legal liability”
- Which is broader?
  - A policy covering abduction / kidnap, stalking, sexual assault, criminal use of a firearm or violent act injuring 3 or more people,... – OR –
  - A policy covering “any physical assault, threatening behavior or verbal abuse occurring in the work setting” ... unless excluded...
Liability Considerations

- General Liability pays for:
  - "... sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage"
  - Insurer has the "right and duty to defend the insured against any suit seeking damages..."

- What if we weren't negligent and I'm not liable?
  - Defense provided, but if there is no liability then there are no damages and no need for coverage

- If I'm liable in a court, then the policy pays for
  - Defense
  - Compensatory Damages and
  - May cover Punitory Damages – (if insurable)

- Medical Professional Liability insurance pays for "... sums legally obligated to pay as damages because of injury if caused by a "medical incident" (an act or omission in the furnishing of professional services)"

- Who is covered by my policy?
  - Entity, Owners, Board, Employees, Administrator, Director of Nursing, Medical Director, Volunteers, Students, Committee Members...

- Be sure to understand how "Claims Made" policies differ from "Occurrence" policies
  - Is there a "cost of exit" for tail coverage?

- What exclusions apply?

- Limits: How do they apply? Policy Aggregate or Per Location limits?

- Defense coverage: Is it included inside or outside the policy limit? Capped?

- Deductible options available?

- Claim Considerations
  - What are the reporting requirements? Incident or Demand Trigger? By who?
  - What is their claims expertise?
  - Do you have any say in the selection of your attorney or in settlement decisions?
  - How quick are they to settle?

- Financial strength of my insurer? Will they still exist in future years?
Very specific “Named Peril” Policies

- Workers Compensation / Auto / Crime
- Computer – Hardware / Media
- Privacy Liability / Cyber-attack / Cyber Extortion – threat or threats made directly against an organization to alter, damage, destroy… data owned by the organization or for which they are legally liable
- Kidnap/Ransom & Extortion Policies / Infant Abduction Policies
- Product Recall
- Directors & Officers Liability
- Employment Practices Liability
- “Enterprise risk” insurance programs can be crafted to insure just about any risk

In Conclusion:

- “Am I Covered?” isn’t the whole question.
- Structuring an insurance program is like putting together a puzzle
- We need to be specific about what we are trying to insure… Don’t Assume Coverage!
- Insurance is readily available to fund many dimensions of a disaster but don’t try to cover them all!
- Work with an insurer who specializes in serving senior care providers
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