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Attorney Advertising

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IS YOUR COMPANY PREPARED FOR A DISASTER? THE PROPERTY AND BUSINESS INTERRUPTION INSURANCE CHECKLIST

By [Joseph D. Jean, Esq.](#)

An unexpected or catastrophic loss can force any company out of business, *even if it's insured*. You must understand your company's risks and how your insurance policies cover those risks in order to manage them and maintain stability.

Having the correct insurance in place is only the first step. Property and business interruption insurance policies are often complex, and your suppliers, customers and other business partners' insurance situation may have a direct effect on you as well. Even if your business doesn't suffer any direct physical damage to its facilities following a natural disaster or other loss, your customers or suppliers may have, and that could result in what is known as a "supply chain" or "contingent business interruption" loss of revenue and sales. If you're unprepared when a disaster strikes, you may miss out on substantial amounts of insurance coverage to which you may be entitled. The time to prepare is before a disaster occurs. Take the time now to understand your insurance coverage and your rights, and put a plan in place to access your insurance coverage in the event of a loss.

THE PLAN

Your plan should be detailed and should identify the specific individuals who will handle each aspect of the claim — from identifying the correct insurance to preparing the proof of loss and negotiating the claim with the insurance company.

The steps you take before the loss are just as important as those taken after the loss. Indeed, most standard property insurance policies require you to preserve and protect insured property. Missteps before the loss can seriously prejudice your rights to recover from your insurer. Therefore, the plan should also identify all of the necessary steps that should be taken both before and after the loss.

Before the Loss

- Understand your existing insurance policies and make certain that the coverage and limits are sufficient. Different types of insurance that might have different sublimits under a standard Property Insurance Policy include:
 - Property Damage
 - Business Interruption or Time Element Insurance
 - Contingent Business Interruption or Contingent Time Element Insurance (e.g. supply chain coverage)
 - Extended Period of Liability (e.g. time to get your customers back)
 - Logistics and Extra Expense Coverage
 - Sue & Labor



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- Civil Authority
 - Actual Cash Value v. Replacement Cost Value
 - Service Interruption Time Element and Service Interruption Property Damage
 - Flood and Wind Insurance
- Understand the applicable deductibles and waiting periods. Property Insurance Policies frequently have various sublimits of insurance, each of which might have its own deductible. Business Interruption or Time Element coverage often has a waiting period and a deductible. Be sure to understand both and to make certain that both are in line with the realities and economics of your business.
 - Schedule specialty and/or particularly expensive property.
 - Maintain accurate records, duplicate copies of policies, and photographs and videos where possible.
 - Develop a plan for how to measure business interruption or time element losses in the event of a wide-impact catastrophe (e.g. hurricane, earthquake, wildfires, tornadoes, flood, etc.). Depending on your business you might be able to maximize your loss by measuring it based on the economic conditions that existed before the catastrophe or those that exist after the catastrophe. See “Effect of Post-Loss Economic Factors in Measuring Business Interruption Losses: An Insured’s and Insurer’s Perspective,” New Appleman on Insurance: Current Critical Issues in Insurance Law 25, Winter 2010.
 - Protect persons and property. Establish and communicate formal emergency response procedures.

After the Loss

- *Notify your insurance company immediately -- even if you haven't suffered any property damage at your facility -- if your suppliers and/or customers have been impacted.*
- Protect persons and property from further injury and damage.
- Mitigate losses by seeking alternate suppliers/sources, etc.
- Consider requesting an immediate advance from the insurance company.
- Watch out for proof of loss and service of suit deadlines.
- Carefully review all provisions of the insurance policy and all available coverage before the proof of loss is prepared.
- Don't just accept the insurer's position. Talk to a coverage lawyer. Property and business interruption insurance policies are complex. Be careful not to rely too heavily on insurance brokers. They are not lawyers, do not know the law, and discussions with them are not necessarily privileged.
- Many policies provide coverage for retaining accountants (but not lawyers and not public adjusters). Do so right away – the insurer will.
- Keep your insurer informed. Be direct and stay on point.
- Carefully and thoroughly document the loss, including increased payroll expenses, overtime, and other increased expenses associated with mitigating losses, extra expense, logistics, travel, etc.
- Do not discard damaged property and preserve the area of the loss where possible to allow for inspection. Take pictures and videos where possible.

Please contact [Joseph D. Jean, Esq.](#) or any of the attorneys in Lowenstein

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