

**AMERICAN BAR ASSOCIATION, SECTION OF LITIGATION,
INSURANCE COVERAGE LITIGATION COMMITTEE**

**CHECKLISTS FOR PROPERTY DAMAGE AND BUSINESS INTERRUPTION
CLAIMS**

As a result of Hurricane Harvey and its aftermath, many policyholders, including many small- and medium-sized businesses, have suffered loss or damage to their homes and business premises, including personal and other property. In addition, many businesses have been destroyed or shut down as a result of flooding, damage, or lack of access to their premises or to sources of supply.

Many individuals and businesses purchase “first-party” property insurance to protect their home, office or shop, and other property, such as furniture and office equipment. These policies may include additional types of insurance coverage, such as business-interruption insurance, which protects against destruction or disruption of the policyholder’s business, depending on the terms of the policy.

It is important to know that property insurance policies, including business-interruption coverage, may include limitations on when a claim can be made. These time limits vary from policy to policy. Failure to give notice to the insurance company within these time limits, or otherwise satisfy such limitations, can invalidate a claim.

The Insurance Coverage Litigation Committee of the Section of Litigation, American Bar Association, has prepared a general checklist for making claims under property insurance policies, and a checklist of additional information that may be required in making a claim under business-interruption coverage. These checklists were originally created as a public service to address insurance issues arising out of the terrorist attacks on September 11, 2001, and the Committee updated them after Hurricane Katrina. As with all issues involving insurance claims, these guidelines cannot and do not cover every situation, or take into account differences in individual insurance policies. Each policyholder must review his or her insurance policy and may wish to consult an attorney or claims adjuster.

The Insurance Coverage Litigation Committee is providing these guidelines with the goal of educating the public about some of the steps typically followed in making a simple property insurance claim. By providing this information, we hope to speed the claims process for policyholders and insurance companies alike, and thus reduce the costs and time involved in resolving claims. These guidelines are not intended as a substitute for legal or other professional advice.

PROPERTY INSURANCE

PROPERTY INSURANCE CHECKLIST:

Property insurance generally covers physical damage to covered property, subject to the conditions and exclusions of the policy.

This checklist outlines some of the steps that are commonly required for presenting a claim under a property insurance policy, and some of the documentation that may be necessary. Policies differ in their provisions, and care should be taken to identify the particular requirements, restrictions and exclusions of your policy.

1. Gather insurance policies and related insurance records. If policy was destroyed or is lost, contact your insurance company or insurance agent/broker to request a copy.
2. Contact other business partners, such as attorneys and accountants, who may have copies of your insurance policies and records.
3. Give notice to your insurance agent and company(ies) immediately, preferably in writing.

Notice should provide the following basic information :

- a. Name and address of insured
 - b. Location of loss
 - c. Date and time of loss
 - d. Contact name, phone, and fax number
 - e. Brief description of the loss
4. Prepare a Proof of Loss
A proof of loss provides details identifying the property destroyed or damaged, and documents the amount of loss incurred. Generally, any information substantiating the claim (photographs, receipts, records) can become part of your proof of claim. Check with your insurance company for the specific information required. Some companies may have a detailed list of documents they seek, or require you to fill out a particular form, such as a Proof of Loss.

5. Acquire copies of police or fire reports (if available).¹
6. Secure vital records and ledgers.
7. Collect photos or videos as proof of damage.
8. Submit proof of loss, photos, and reports to insurance company.
9. Assist in insurance company's investigation.

Property insurance policies typically allow an insurance company to conduct an investigation of the claim with the insured's cooperation. This may be in a provision entitled "Duties in the Event of Loss." This provision may allow the insurance company to interview the policyholder claimants in a process often called an "examination under oath" (EUO). The policy may also require the insured to exhibit the property, take reasonable steps to protect the property, and generally cooperate with the insurer's claim investigation.

¹ Ask local police department. Obtain a separate report or add information to the original report if looting occurred.

BUSINESS INTERRUPTION INSURANCE CHECKLIST

Many businesses have suffered a complete or temporary interruption of their business operations because of Hurricane Harvey. The following checklist identifies basic procedures and considerations for putting together a potential business interruption claim.

This preliminary checklist is by no means exhaustive, but is intended as an initial guide, in connection with other materials readily available, to assist in the efficient preparation of such claims. It is important to note that the items on this list may or may not apply to specific claims, depending upon the language of the actual insurance contracts involved and the facts of the claim.

REVIEW THE POLICY

Many business property policies include business interruption coverage to cover lost business income and at least some of the extra expenses associated with restoring business operations after a property loss. Such coverages usually apply only to business losses caused by a covered cause of loss to covered property. Policy terms may vary greatly. As with any insurance claim, the first step is to review the applicable policy language.

Typically, business income coverage is subject to the policy conditions, including the “Duties After Loss” discussed above. Thus, the policyholder may be required to substantiate the claim by making available the company’s books and records, financial statements, income and expense reports, and the like. If those original records have been destroyed or otherwise no longer exist, they should be recreated from other sources, such as documents maintained by the policyholder’s accountant, or business partners.

TYPES OF COVERAGE

Business Income. Designed to replace income that would otherwise have been earned by the business had no loss occurred. Business income is generally defined as the net profit or loss before taxes, plus continuing normal operating expenses, including payroll. Note that the usual insurance definition of net profit is the net profit (or loss) before taxes, in contrast to the accounting definition of net profit (or loss), which is the net profit after taxes. Coverage is generally limited to the loss of income sustained until the property is restored, or for 12 months following the physical loss or damage. Other limitations apply to the period for which “ordinary payroll” coverage is included –often only 60 days.

“Ordinary payroll” generally means payroll for employees other than officers, executives, department managers, or employees under contract.

- Extra Expense.** Designed to pay for necessary expenses incurred during the period of restoration of the property, that would not have been incurred if there had been no physical loss or damage to the property. Extra expenses include those necessary to continue operating the business at its original location, or at a temporary replacement location until the original location is repaired. Extra expenses may also include expenses that minimize the time your business is unable to operate. Further, coverage generally applies to extra expenses made to repair or replace damaged property, or to restore or replace valuable papers and records, but only to the extent that the extra expenses actually reduce the amount of loss.
- Contingent Business Interruption.** An extension of coverage designed to cover loss of income you incur in your business due to a property loss at a key supplier or customer location. For example, if a key supplier experiences a fire at its plant and is unable to deliver parts or goods necessary for the continuation of your business, you may have a claim for a contingent business interruption loss.
- Civil Authority.** Coverage may also be available for loss of business income and extra expense sustained as a result of government denial of access to your property, due to a covered loss at a location not owned by you. There may be a 2- or 3-day waiting period before coverage begins, and coverage generally only applies for a few weeks.
- Possible Coverage Adjustments**
 - Extended Period of Indemnity:** May extend period for loss of income coverage for a specified time beyond completion of repairs.
 - Requirement of a Business “Suspension”:** May determine whether a complete or partial cessation of business is needed to trigger coverage.
 - Resumption of Operations:** May limit business interruption loss to the point at which operations can be even partially resumed, even though the business may not be able to fully sustain itself.
 - Coinsurance Provision:** Requires that policyholder must pay a share of business income loss if the actual loss sustained is substantially higher than the estimated income established at the time insurance was purchased.
 - Agreed Value:** Establishes in advance a maximum for recovery in any given month.

- Covered Locations: Identifies what locations are covered. There may be extensions of coverage for “newly acquired locations” to cover property recently acquired, and for property at locations not owned by the insured.
- Ingress/Egress: Coverage may be provided for loss of business income and extra expense when you cannot gain access to your property without the government action required under the coverage for closure by a civil authority.
- Building Ordinances: May provide coverage for the additional time required to rebuild due to compliance with building ordinances.
- Electronic Media and Records Limitation: May limit replacement period for such data and documents.
- Possible Exclusions**
 - Property exclusions. Since there typically must be a covered loss to covered property for business income coverage to apply, all of the exclusions in the property section of the policy are generally relevant.
 - Idle periods: Coverage is generally excluded for periods when operations would normally have been idle
 - Interference: Additional costs of rebuilding due to labor unrest may be excluded.
 - Loss of contracts: Income loss on long-term contracts may be limited to period ending with completion of repair or replacement
 - Consequential losses: Coverage for consequential losses is generally excluded, unless the policy contains an extension of coverage for such losses.
 - Utility service interruption: Coverage generally does not extend to utility service interruption.
 - Finished stock: For manufacturing operations, recovery for lost profits on finished stock may be covered under physical damage to property, rather than under business interruption.
- Special Conditions and Limitations**
 - Appraisal: In addition to loss conditions of the property policy, business interruption coverage may include specific appraisal provisions for valuing the loss of income and extra expenses.

- Duties in the Event of Loss: Read the policy carefully to clarify what duties you have in the event of a loss, in addition to those in the general property policy.
- Loss Determination. Policies typically contain general provisions for determining the amount of business income loss and extra expense incurred. However, you may need to engage the assistance of your agent/broker, accountant, or attorney to provide clarification of some provisions.

Calculating the Business Interruption Loss

The following list sets forth some representative questions that should be reviewed in calculating the extent of a business interruption loss. This list is not necessarily exclusive, nor do each of the items necessarily apply to every claim.

Impact

- What type of operation is affected (office, store, restaurant, plant)?
- Is there interdependency with other operations?
- Is operation partially or totally disrupted?
 - What is the normal operation capacity of the operation that was damaged?
 - At what percent of capacity were you operating just prior to the loss?
 - At what rate did you expect to operate during the loss period?
 - How many shifts a day did you operate? How many do you operate now?
 - How many shifts a day, week, or month do you dedicate to maintenance?
 - What is expected downtime?
 - Can you add shifts to reduce potential operation loss?
 - Can you operate temporarily at another site to reduce the loss?
- Are sales affected? Partially? Totally?

- How long will you need to continue paying salaried employees until the business is restored? Can they assist with restoration of the premises and business operation?
- Do you need to pay hourly employees to retain them during the time the business is not operating? Can they help with clean-up and repair during restoration?

Mitigation and Recovery

Policies generally require a policyholder to mitigate its losses.

- Are you able to access alternative facilities?
- Could sales or service be conducted elsewhere?
- Can rental equipment, overtime or additional shift work be used? At what added cost?
- How much production can be made up with overtime and how long will it take?
- Will you be able to supply customers from inventory during loss period?
- If you have to draw down on inventory to meet orders, how long will it take you to replenish inventories to the quantities before the loss?
- Are there limited markets or major suppliers?
- How much production can be deferred?
- Are long-term contracts at risk?
- Potential Claim Items for Extra Expense.

Some of the following cost categories may be recoverable as “Extra Expenses,” depending upon the coverage provided.

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| <input type="checkbox"/> Depreciation | <input type="checkbox"/> Advertising |
| <input type="checkbox"/> Repairs and maintenance | <input type="checkbox"/> Real and personal property tax |
| <input type="checkbox"/> Rent | <input type="checkbox"/> Other taxes |
| <input type="checkbox"/> Postage | <input type="checkbox"/> Claim preparation expense |
| <input type="checkbox"/> Telephone | <input type="checkbox"/> Corporate charges |

- Utilities
- Supplies
- Dues and subscriptions
- Travel
- Vehicle usage
- Labor (direct and indirect)
- Overtime
- Payroll tax
- Unemployment compensation
- Holiday, sick and vacation time
- Workers' compensation
- Insurance and benefit cost
- Consulting fees
- Legal fees
- Other outside fees
- Experimental expenses
- Recruiting
- Bad debts
- Discounts
- Interest on loans
- Profit on loans
- Tooling
- Bonuses
- Sales department
- Research and development
- Engineering service
- General/administration expenses
- Commissions
- Licenses
- Tax penalties