BUSINESS INTERRUPTION INSURANCE: RECOVERING FROM CATASTROPHIC EVENTS

Sergio F. Oehninger & Teri J. Diaz Morgan Lewis & Bockius LLP

In the wake of catastrophic events, businesses are exposed to devastating economic losses and property damage. Over the last year, severe weather events, including Hurricane Ida, historic winter weather conditions, tornadoes, and storms, have wreaked havoc on businesses—with some estimates reaching $110–120 billion in global insured losses caused by such events in 2021.

In order to minimize the business interruption effects of catastrophic events, businesses should evaluate their insurance policies to (1) promptly pursue insurance recoveries after such an event and (2) consider whether additional, or different, coverages may be better tailored to their specific operations and risks going forward. For example, most modern businesses depend on a reliable supply chain to operate successfully and efficiently. However, as the last year has shown, unprecedented catastrophic events have caused, and continue to cause, substantial and compounding disruptions of supply chains. Insurance may help mitigate such losses for businesses.

To face such challenges, a critical and proactive first step for businesses is to evaluate all potentially applicable insurance policies for business interruption coverages. While coverages may take different forms, common coverages include the following:

- **Business Interruption or "Time Element" Coverage.** Business interruption or time element coverage, often provided in first-party commercial property policies, reimburses the policyholder for income that the policyholder would have earned, but for the interruption to its business. If physical loss or damage from a catastrophic event forces a business to shut down its operations and causes economic losses, then business interruption coverage may respond.
- **Contingent Business Interruption or Contingent Time Element Coverage.** Contingent business interruption or contingent time element coverage provides insurance for losses resulting from disruptions to a business's suppliers, contract service providers, or customers. Coverage may also be extended to indirect suppliers and customers. Contingent business interruption insurance typically requires that the supplier sustain the type of physical loss or damage that would be covered with respect to the business's own property. A business may also be required to specifically identify supplier and customer locations to be covered.
- **Service Interruption Coverage.** Service interruption insurance covers property damage and business interruption losses caused by the interruption of certain specified services—such as electricity, water, gas, fuel, or refrigeration—to covered locations. Service interruption coverage typically requires physical loss or damage to the property of the insured's utility supplier, and it may also mandate additional notification requirements.
- **Supply Chain Coverage.** Other standalone supply chain coverages may respond to a wider range of events, including natural disasters, but also labor issues, industrial incidents, shipping accidents, production process issues, political unrest, civil strife, and even war. Some supply chain insurances can provide broader coverage than contingent business interruption coverage and may not be contingent on physical loss or damage of the prescribed type insured at the contingent time element location.

Once a policyholder has identified all available insurance policies, key steps to preserve coverage claims and maximize recoveries include (1) documenting damage and maintaining records; (2) complying with notice, proof of loss, and suit limitation clauses in the policies; (3) cooperating with insurers; and (4) assembling an experienced team to present, negotiate, and, if necessary, litigate the claim.

With the ever-growing financial risks associated with catastrophic events, all business sectors should consider how their insurance coverage might help protect their business and mitigate losses. To the extent any questions or issues arise regarding the scope or extent of coverage for such losses, businesses should seek advice from insurance professionals, including coverage counsel.

Sergio Oehninger *is a litigation partner at Morgan Lewis in DC. Sergio represents policyholders in complex insurance coverage and bad-faith disputes in the U.S. and globally. He advises multinationals on insurance coverage and risk management for corporate and general liability, products liability and environmental exposures, business interruption, property damage, transactional, cyber, political, war, aviation, and cargo risks. Sergio also advises Latin American clients on cross-border insurance, captives, and other sophisticated risk transfer solutions.*

Teri Diaz *is a litigation associate at Morgan Lewis in DC. Teri focuses her practice on representing corporate policyholders in the preservation and recovery of insurance assets. She has advised companies in complex insurance recovery matters including disputes involving toxic torts, property damage, business interruption loss, and other liabilities.*