



Business Interruption and COVID 19

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Presented By



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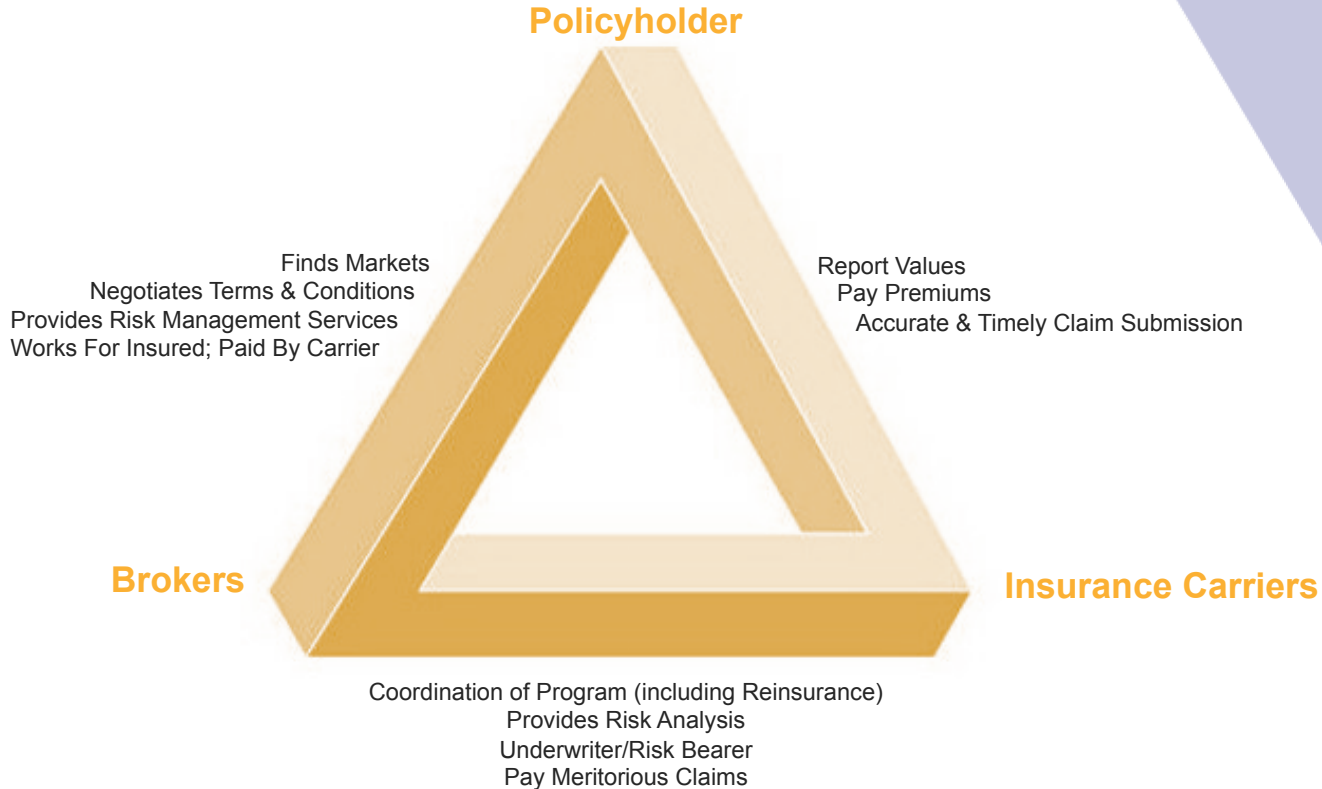
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AGENDA

- Introduction of Key Industry Players
- Overview of Property Insurance in General
 - First Party Policies
 - Basic Property Insurance Coverage
- Property Loss and Damage
 - What Type of Property is Covered?
 - Covered Causes of Loss
 - Valuation of Covered Property
 - Dispute Resolution
- Business Interruption
 - Trigger of Coverage
 - What is Covered?
 - Period of Restoration
 - Extended Period of Restoration
 - Contingent Business Interruption
 - Extra Expense
- COVID 19 - Complexity of Current Risk Environment
- Questions, Comments, Conclusion

Tri Partite Relationship

INTRODUCTION OF KEY INDUSTRY PLAYERS



OVERVIEW OF PROPERTY INSURANCE

- 
- ✓ First Party Policies
 - ✓ Basic Property Insurance Coverage
 - ✓ Covers Tangible Property
 - ✓ Covered Causes of Loss
 - All Risk
 - Named Peril
 - ✓ Valuation of Property
 - Actual Cash Value
 - Replacement Cost Coverage
 - Holdback
 - Repair vs. Replacement
 - ✓ Appraisal

Property Insurance

OVERVIEW OF PROPERTY INSURANCE

- ✓ “We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of loss.”

Property Insurance

- ✓ Trigger – loss or damage
- ✓ Property – only “covered property”
- ✓ Cause – either “all risks” or “named peril”

Appraisal

OVERVIEW OF PROPERTY INSURANCE

If the Insured and the Company fail to agree on the amount of loss, each will, on the written demand of either, select a competent and disinterested appraiser after:

- 1) the Insured has fully complied with all provisions of this Policy, including **REQUIREMENTS IN CASE OF LOSS**; and
- 1) the Company has received a signed and sworn proof of loss from the Insured.

Each will notify the other of the appraiser selected within 20 days of such demand.

The appraisers will first select a competent and disinterested umpire. If the appraisers fail to agree upon an umpire within 30 days then, on the request of the Insured or the Company, the umpire will be selected by a judge of a court of record in the jurisdiction in which the appraisal is pending. The appraisers will then appraise the amount of loss, stating separately the Actual Cash Value and replacement cost value as of the date of loss and the amount of loss, for each item of physical loss or damage or if, for **TIME ELEMENT** loss, the amount of loss for each **TIME ELEMENT** coverage of this Policy.

closed

“30% of all companies who experience a catastrophic loss will fail within the first 24 months and an additional 29% will fail beyond 24 months.

Source: META Research Report

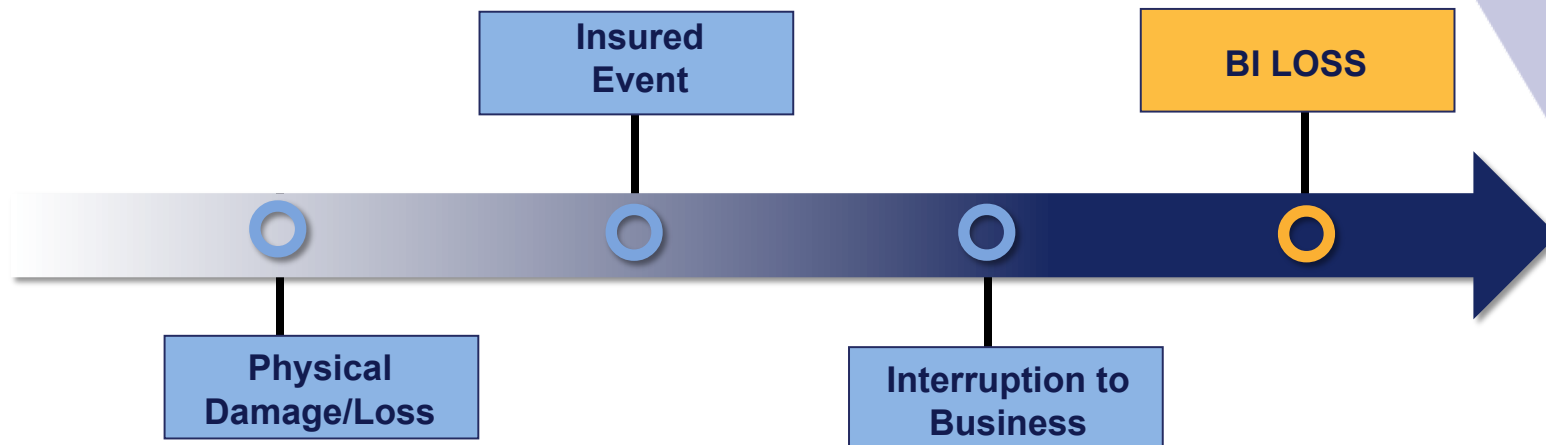
What is Business Interruption?

BUSINESS INTERRUPTION

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*.

Key Terms

- Necessary suspension of operations
- Period of Restoration



Period of Restoration

BUSINESS INTERRUPTION

The **PERIOD OF RESTORATION** applying to **all TIME ELEMENT COVERAGES**, is as follows:

- 1) For building and equipment, the period:
 - a) starting from the time of physical loss or damage of the type insured against; and
 - b) ending when with due diligence and dispatch the building and equipment ***could be:***
 - (i) repaired or replaced; and
 - (ii) made ready for operations, under the same or equivalent physical and operating conditions that existed prior to the damage.
 - c) not to be limited by the expiration of this Policy

Extended Period of Indemnity

BUSINESS INTERRUPTION

The Business Income coverage is extended to cover the reduction in sales resulting from:

- 1) the interruption of business as covered by the Time Element;
- 2) for such additional length of time as would be required with the exercise of due diligence and dispatch to restore the Insured's business to the condition that would have existed had no loss occurred; and
- 3) commencing with the date on which the liability of the Company for loss resulting from interruption of business would terminate if this Extension had not been included herein.

Contingent Business Interruption

BUSINESS INTERRUPTION

Contingent Business Interruption

(a/k/a Dependent Property, Attraction or Leader Coverage)

Policy words are key:

“A. This policy insures loss resulting from or caused by physical loss or damage insured herein to the following:

1. Property that *directly prevents* a supplier (including suppliers of any tier) of goods and/or services to the Insured from rendering their goods and/or services, or property that *prevents* customers (*including customers of any tier*) of goods and/or services from the Insured from accepting the Insured's goods and/or services.”

Extra Expense

BUSINESS INTERRUPTION

The recoverable **EXTRA EXPENSE** loss will be the reasonable and necessary extra costs incurred by the Insured of the following during the **PERIOD OF LIABILITY**:

- a) Extra expenses to temporarily continue as nearly normal as practicable the conduct of the Insured's business; and
- b) Extra costs of temporarily using property or facilities of the Insured or others

The background of the slide features several stylized, light blue illustrations of COVID-19 virus particles. These particles are spherical with a textured surface and numerous protruding spike proteins. They are scattered across the slide, with one large, detailed particle on the right side and several smaller, more faded ones on the left and bottom left.

COVID-19 Losses

Litigation

COVID 19

- ✓ 1,900 lawsuits
- ✓ 430 Decisions
- ✓ Summary judgment rulings for insureds in North Carolina, Oklahoma, Ohio, Pennsylvania, Washington, New Hampshire
- ✓ Key Issues:
 - Direct “**physical loss of or damage**” to property
 - Applicability of exclusions
 - Lead-in Language (Anti-Concurrent Causation?)
 - ISO 2006 Virus Exclusion, etc.



COVID Coverage Litigation Tracker

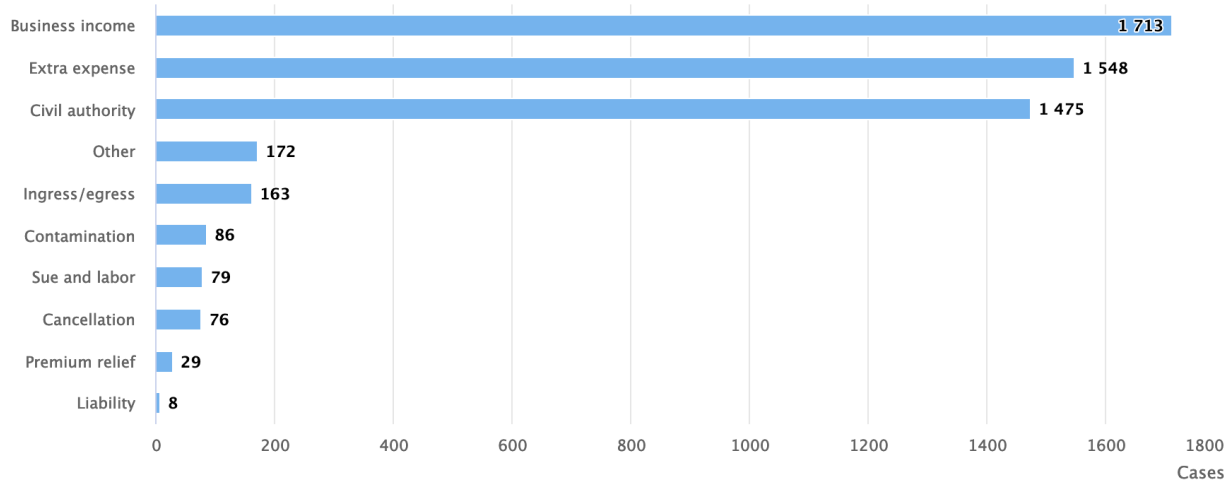
COVID 19

<https://cclt.law.upenn.edu/>



Allegations

Coverage Sought



Physical Loss Includes “Loss of Use”

COVID 19

Applying these definitions reveals that the ordinary meaning of the phrase ‘direct physical loss’ includes the inability to utilize or possess something in the real, material, or bodily world . . . [and, therefore] describes the scenario where businessowners . . . lose the full range of rights and advantages of using or accessing their business property. This is precisely the loss caused by the Government Orders. ***Plaintiffs were expressly forbidden by government decree from accessing and putting their property to use for the income-generating purposes for which the property was insured. These decrees resulted in the immediate loss of use and access without any intervening conditions. In ordinary terms, this loss is unambiguously a ‘direct physical loss,’ and the Policies afford coverage.***

North Deli, at *3.

Trend Clauses

COVID 19

“Without language in the policy instructing us to do so, we decline to interpret the business-interruption provision in such a way that the loss caused by Hurricane Katrina can be distinguished from the occurrence of Hurricane Katrina itself.”

FCA Test Case, ¶ 278 (citing *Catlin v. Imperial Palace*)

“We consider that the trends clauses ... should be construed so that the ... gross profit derived from previous trading is adjusted only to reflect circumstances which are unconnected with the insured peril and not circumstances which are inextricably linked with the insured peril in the sense that they have the same underlying or originating cause.

Id. at ¶ 287.

Measuring COVID-Related Losses

- ✓ Business Interruption
 - ✓ **Top-Down:** Lost Revenues less Non-continuing (Saved) Expenses
 - ✓ **Bottom-Up:** Lost Net Profit plus Continuing Expenses



- ✓ Extra Expenses
 - ✓ Extraordinary expenses incurred as a result of the loss (e.g. *Sanitation supplies & equipment*)
 - ✓ Increases in expenses (e.g. *OT payroll costs*)
- ✓ Property Damage
 - ✓ Align with coverage
- ✓ Issues defining Period of Indemnity & Extended Period

COVID 19



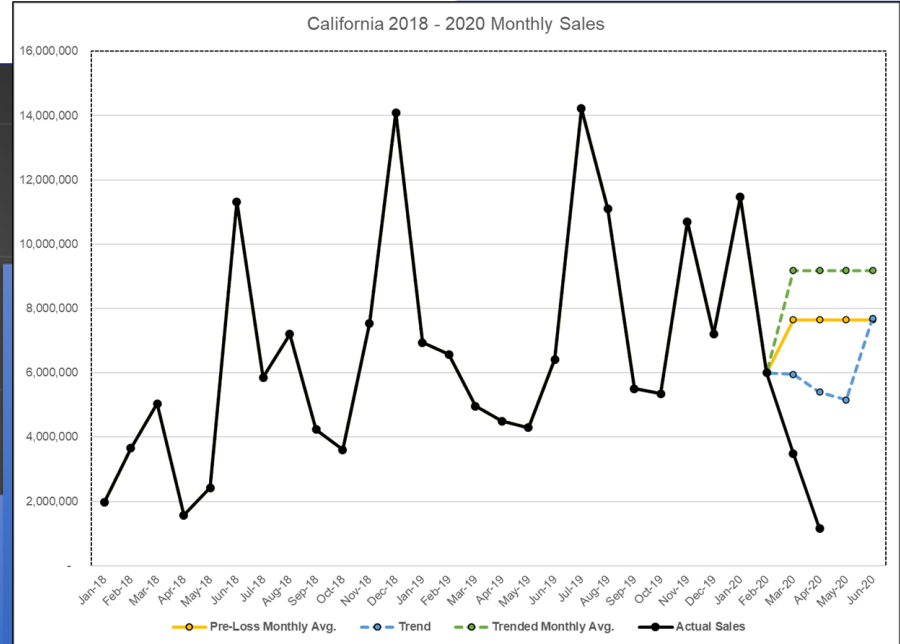
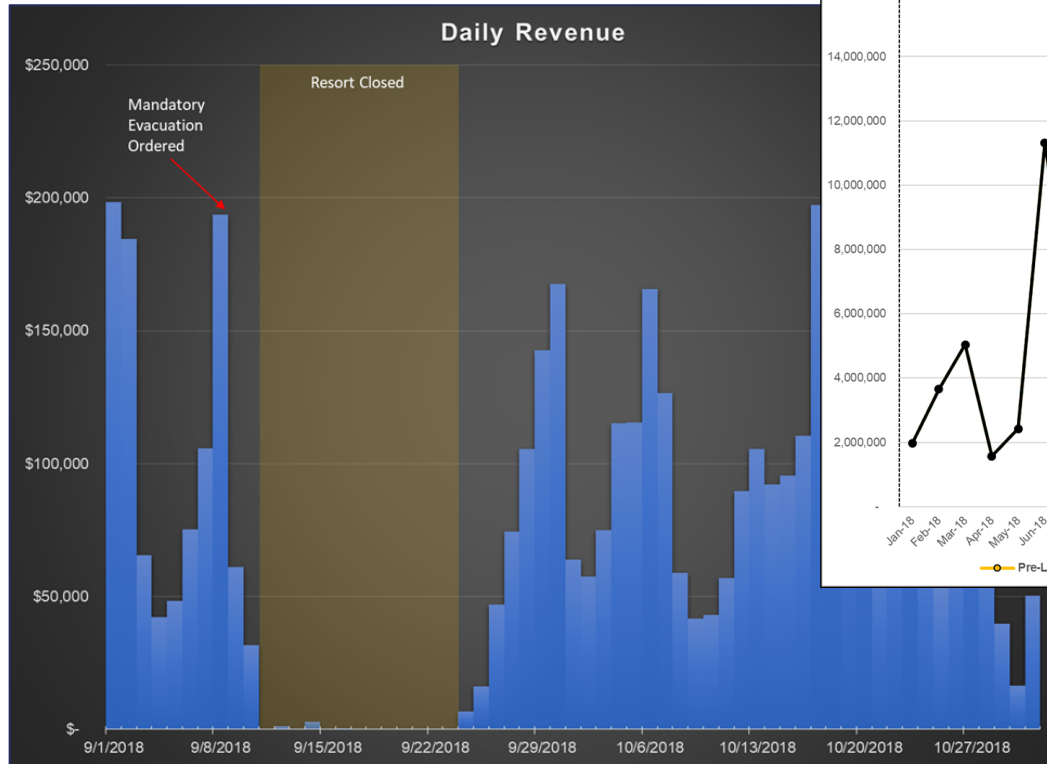
Data Required

COVID 19

- ✓ Profit & Loss Statements
- ✓ Forecasts / Budgets
- ✓ Sales Data (*Daily, By Customer, etc.*)
- ✓ Production Data
- ✓ Tax Returns
- ✓ Payroll Records
- ✓ Contracts
- ✓ Documentation on Specific Lost / Cancelled Sales

Sample Data Visuals

COVID 19



Your Questions





Thank You

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