

## **Business Interruption - interesting times.**

**In the aftermath of the Canterbury earthquakes Commercial insurers will have received more business interruption insurance claims than the total received in the previous 10 years. This presents an interesting challenge and puts the effectiveness of business interruption and how it responds firmly in the spotlight for customers, brokers and the media.**

At Vero we've taken a considered approach and obtained clarification on some points so that we can negotiate the best outcome for our customers.

There are a number of Business Interruption covers in the market today that have been developed by underwriters and brokers - all are based on the same fundamentals:

- Business interruption policies are designed to provide indemnity for business interruption losses caused by physical damage at the insured's premises. This "base cover" is only available where the physical damage at the insured's premises is insured under a material damage policy. The indemnified business interruption loss is confined to those losses that would not have occurred "but for" the insured physical damage at the insured's premises. Normally, the business interruption is due solely to physical damage at the insured's premises and no coverage issues arise.
- Where there has been damage, the amount of the claim is calculated to represent as closely as possible the results that would have been achieved during the period after the loss, had the business not been damaged (subject to various policy limits and so on). This is the impact of the "adjustments clause" which would apply where, for example, "depopulation" affects the amount that may be claimed.
- The base cover does not indemnify business interruption losses caused by circumstances other than insured physical damage at the insured's premises. For example where business interruption is caused by the imposition of a cordon, which affects businesses in damaged and undamaged premises equally, the base cover does not respond. In the leading case in this area, the English High Court held that base cover was not available to a hotel damaged by Hurricanes Katrina and Rita, because the evacuation of New Orleans would have caused its losses in any event (*Orient-Express Hotels Limited v Assicurazioni General SpA (2010)*).
- In recognition of this issue, most business interruption policies, including the Vero BusinessPlan policy, provide Automatic Extensions to cover the typical causes of loss in major disasters: prevention of access, loss of utilities, closure of transport routes etc. These extensions vary between different policies, but are usually subject to sub-limits and may apply for a limited period of indemnity. How these apply differs between the various broker and underwriter core wordings available in the market. Also, while the cover available under the extensions may be subject to a limit (this is normally set out in the policy schedule and is often 5% or 10% of the sum insured) it is possible that a number of extensions may apply.
- The length of the Indemnity Period is also critical. Too short an Indemnity Period may mean that a business may not have started to trade or is only trading on a very limited basis when cover ceases. The length of the Indemnity Period for a business in the cordon is particularly important. Once the cordon and any other factors interrupting the business (other than damage at the insured's business) are removed, the "base cover" becomes available where the indemnity period still has some time to run.
- Often, where a business interruption loss occurs, the business might not be able to operate for a prolonged period and customers might need progress payments to meet their immediate needs. Given the complexities of quantifying the final claim, non-specific payments are often made which are adjusted once the final amount of the total property and interruption claim for the customer is known.

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Taking the above into consideration, the entitlements of individual customers will vary widely depending upon their precise circumstances and the level of cover they have purchased. At Vero we are committed to working with each of our customers to assess their situation and to ensure that they receive the payments to which they are entitled.

**To read more about Business Interruption insurance, the following references may be of interest (click on each to link):**

[Orient Express Hotels vs Assicurazioni General SpA \(May 2010\)](#)

[Understanding Business Interruption cover \(Duncan Cotterill - 26 April 2011\)](#)

[Insurance brokers respond to clause \(NewsTalk ZB - 31 May 2011\)](#)

[Quake affected businesses affected by insurance companies \(NewsTalk ZB - 31 May 2011\)](#)

[Christchurch businesses misunderstanding business payments \(TV3 News - 31 May 2011\)](#)