

LAROE P.C.

HAIL

FIRE

FLOOD

COLLAPSE

HURRICANE

WIND DAMAGE

WATER INTRUSION

BUSINESS
INTERRUPTION

ENVIRONMENTAL
CONTAMINATION

CONSTRUCTION
PROJECT DAMAGE

10 Steps to Success – Policyholders’ Guide to Commercial Property Damage Claims

It’s essential to the success of any business to know what to do when faced with a commercial property insurance claim.

Just imagine: You’re a busy CEO, CFO or VP and, in the middle of the night, you receive a frantic call. The voice on the other end of the telephone says, “Boss, our plant is on fire! What should we do?”

It happened to me. In early 1993, Dallas was celebrating the Cowboys’ 52-17 Super Bowl victory over the Bills with a parade. At 7:00 a.m., my senior paralegal called me and said “Jim, you don’t need to come to work this morning—there’s a fire in our building and it’s on our floor!” I experienced, on a very personal level, the chaos and uncertainty that the fire presented. Nothing in my life could have given me that perspective of having a fire burning through my business, not even my years of experience in representing clients in multi-million dollar property damage claims.

Every day business leaders are faced with the devastation of catastrophes such as fires, hurricanes, tornadoes, floods and hailstorms that threaten to severely hinder or even destroy their otherwise successful businesses. Leaders are faced with questions like: How do we continue to pay our people? How do we fill our customers’ orders? Where are we going to conduct business?

Most leaders think that since they bought commercial property insurance, they are bulletproof should disaster strike. Common belief is that if disaster strikes, all a business leader needs do is make a claim and, like Superman, their insurer will take care of everything—will pay up and make them whole immediately. Is it really that simple?

The short answer is: no, probably not. Simply because a company pays premiums for commercial property insurance does not mean:

- 1) that they have the correct coverage;
- 2) that they can properly present their claim;
- 3) that their insurer will pay them; or
- 4) pay them in a timely manner.

To be successful in claims, business leaders must be proactive in preserving and protecting their rights.

Significant commercial property insurance claims are very, very complex. Insurance policies are agreements between companies and their insurers with complicated terms, conditions, limits, exclusions, deductibles, self insured retentions, co-insurance penalties, appraisal clauses, arbitration clauses and other complexities. Each policy is governed not only by its own terms but also by state

LAROE P.C.

statutes on timing and fairness, state insurance codes and state case law. To add to the complexity, insurers and their teams of adjusters, experts and consultants are very familiar with the policies and claims process. Most business leaders are not.

While most insurers act fairly, in a timely manner and are helpful with their policyholders, sometimes insurers make wrong decisions and adjusters wrongfully deny valid claims. In such instances, it is important that businesses know their rights and how to protect them.

There are 10 basic steps to success that every company should take to protect their rights:

1. Immediately Notify Your Broker, Agent and Your Insurance Company Directly and Document it in Writing.

Most commercial insurance policies have very strict notice requirements. If a claim arises, you should immediately contact all of your insurance agents and/or brokers and, also, contact all of your insurance companies directly to notify them of your claim. Don't rely on your agents to communicate for you. You should also immediately send written notices of your claim to all of your agents, brokers and insurers.

2. Establish Your Company's Point Person.

It's very important that you communicate promptly and effectively with your insurer and its team of adjusters, experts and consultants.

If you have a Disaster Recovery Plan (DRP) or a Business Continuity Plan (BCP), you should implement and follow it. Good DRPs and BCPs have a process for immediately appointing "catastrophe commanders" to communicate and act for the company.

If you don't have a DRP or BCP, your company should immediately make an executive/board level commitment to appoint an authorized, capable and accessible executive to be the "point person" for your company's claim and to act as your spokesperson. Your point person will need to be authorized to communicate with your insurer's representatives and to mobilize resources, hire experts, gather the necessary information to present your claim and to immediately retain litigation counsel, if necessary. You will also need to appoint a person to establish and implement an accounting process to track all of your activities, costs and expenses related to your claim.

3. Know Your Rights—Personally Read Your Policy and All Endorsements.

Get your policy (from your agent if necessary) and read it ... actually read it. It's important that your point person and everyone on your claims team knows all of the different bases for your claim, the coverages involved and the potential exclusions.

4. Establish and Follow an Organizational Process.

After you've familiarized your team with your rights, you must establish your company's team and process for preparing your claim

LAROE P.C.

which will include: documenting everything, internal compliance, marshalling your information and witnesses, calendaring important dates and events, pushing your claim through the process. Companies should also maintain communication protocols both internally (e.g., advising employees about acceptable emails to each other about the claim) and with your insurer -- always being mindful of addressing internal privilege and confidentiality issues.

5. Understand The Roles and Responsibilities of Your Insurer's Team.

You need to understand the roles and motivations of the team that your insurer uses to respond to your claim. After your insurer receives your notice of loss, they will mobilize many different people including independent adjusters who are not their employees (and may not have been through their training) to communicate with you and "adjust" your claim. Insurers will also likely include consultants to document the extent of your covered loss such as forensic accountants and engineering experts to investigate the cause of your loss to help your insurer approve or deny coverage. Your insurer's team is there to determine whether or not your insurer should pay your claim and, if so, how much your insurer should (or should not) pay. While these persons are often very helpful, their loyalty lies with your insurer. Therefore, you need to make sure that you are specific in your communications and that you document (and confirm in writing) each person's name, contact information, stated assignment, activities and

communications with you. Each of your insurer's team members is a potential witness in any claim dispute litigation that may arise.

6. Act to Mitigate Your Claim and Document Your Actions.

You have a duty to act to mitigate your claimed damages. Your mitigation actions might include moving your manufacturing jobs from a damaged manufacturing facility to be filled at another facility or at a 3rd party facility or quickly setting up alternative operations facilities.

7. Communicate and Cooperate with Your Insurer.

You must communicate effectively, directly and often with your insurer but always document in writing. If you don't communicate effectively or document your communications, you are providing your insurer with ammunition to support denying all or part of your claim.

8. Avoid Personality Conflicts.

Most, if not all, insurance claim conflicts arise from personality conflicts between policy holders, their representatives and insurance adjusters. To maximize the value and the time value of your claim, you should avoid personality conflicts at all costs. Use steps to neutralize overly aggressive adjusters such as documenting all communications in writing, pressing statutorily required response times aggressively and hiring appropriate forensic experts to document all of your company's claim.

LAROE P.C.

9. Be Realistic About Evaluating Your Claim and the Cost/Benefit Involved.

Evaluating complex property damage, extra expense and business interruption claims is challenging and subject to different interpretations. The evaluation process involves many factors such as comparing the potential amount of recovery to the time value of the money, the potential ongoing damage to the business and the expense involved in the claim process. You should evaluate the costs and benefits of your claim and adapt and update your evaluation regularly.

10. Seek Claims Counsel Early and Be Prepared.

The best way to avoid a fight is to be prepared. Even if you have committed to the claim process, understand your rights and have a process and a strategy planned, sometimes insurer delays, diversions, purposeful stall tactics, denials or aggressive unsupported positions may make it necessary to institute a lawsuit, appraisal process or arbitration. Seeking professional claims counsel early is the best way to attempt to avoid a legal fight on your claim. Get prepared early in your claims process and you will be in a position to best prevent most conflicts.

Your best chance for success is to be proactive and ready to take action when, and if, it happens. If you're prepared and follow these seemingly obvious, but often times overlooked steps, you will be in the best position to maximize your company's commercial property damage claims and will

be able to respond immediately and effectively when you get that late night call.

The Law Offices of James K. LaRoe, P.C. has issued this white paper for informational purposes only and is not intended to be construed as general legal advice. Hiring an attorney is an important legal decision. Before you decide, ask for written information about a lawyer's legal qualifications and experience.

CONTACT INFORMATION:

The Law Offices of James K. LaRoe, P.C.
700 Premier Place
5910 North Central Expressway
Dallas, TX 75206
t 214.219.9000
f 214.219.9009
www.laroepc.com