Business Income Coverage and Claims

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Panel

- Aaron Simon – Moderator
- Matt Woodcock – Forensic Accountant
- Joe Lulic – Senior Litigation Attorney
1) Learn about Business Income exposures and claim trends, including complex business income claims.

2) Review policy structure including important provisions and exclusions.

3) Review claims process, highlighting common claims, important notice requirements, and the different parties involved in that process.

4) Q&A
2) Policy Overview

- Typical coverage language and forms
- Exclusions
- Endorsements
- Other Coverage Limitations/Issues
“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.’ The "suspension" must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit Of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss.”
2) Policy Overview

1. Business Income

Business Income means the:

a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and

b. Continuing normal operating expenses incurred, including payroll.

For manufacturing risks, Net Income includes the net sales value of production.
2) Policy Overview

2. Extra Expense
   a. Extra Expense Coverage is provided at the premises described in the Declarations only if the Declarations show that Business Income Coverage applies at that premises.
   b. Extra Expense means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.
2) Policy Overview

We will pay Extra Expense (other than the expense to repair or replace property) to:

(1) Avoid or minimize the "suspension of business and to continue operations at the described premises or at replacement premises or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location.

(2) Minimize the "suspension" of business if you cannot continue "operations",

We will also pay Extra Expense to repair or replace property, but only to the extent it reduces the amount of loss that otherwise would have been payable under this Coverage Form.
2) Policy Overview

5. Additional Coverages
a. Civil Authority

In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations. When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

1. Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
2. The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.
5. Additional Coverages
a. Civil Authority (continued)

Civil Authority Coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

Civil Authority Coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:
(1) Four consecutive weeks after the date of that action; or
(2) When your Civil Authority Coverage for Business Income ends; whichever is later.
2) Policy Overview

c. Extended Business Income

(1) Business Income Other Than "Rental Value"

If the necessary "suspension" of your "operations" produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:
   (a) Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations“ are resumed; and
   (b) Ends on the earlier of:
       (i) The date you could restore your "operations", with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damage had occurred; or
       (ii) 60 consecutive days after the date determined in (1)(a) above.

However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.
c. Extended Business Income (continued)

(2) "Rental Value"

If the necessary "suspension" of your "operations" produces a "Rental Value" loss payable under this policy, we will pay for the actual loss of "Rental Value" you incur during the period that:

(a) Begins on the date property is actually repaired, rebuilt or replaced and tenantability is restored; and

(b) Ends on the earlier of:

(i) The date you could restore tenant occupancy, with reasonable speed, to the level which would generate the "Rental Value" that would have existed if no direct physical loss or damage had occurred;

or

(ii) 60 consecutive days after the date determined in (2)(a) above.

However, Extended Business Income does not apply to loss of "Rental Value" incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located. Loss of "Rental Value" must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.
4. Coverage Extension
If a Coinsurance percentage of 50% or more is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

Newly Acquired Locations
a. You may extend your Business Income and Extra Expense Coverages to apply to property at any location you acquire other than fairs or exhibitions.
b. The most we will pay under this Extension, for the sum of Business Income loss and Extra Expense incurred, is $100,000 at each location.
c. Insurance under this Extension for each newly acquired location will end when any, of the following first occurs:
   (1) This policy expires;
   (2) 30 days expire after you acquire or begin to construct the property; or
   (3) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property. This Extension is additional insurance. The Additional Condition, Coinsurance, does not apply to this Extension.
2) Policy Overview

B. Limits Of Insurance
The most we will pay for loss in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

Payments under the following coverages will not increase the applicable Limit of Insurance:
1. Alterations And New Buildings;
2. Civil Authority;
3. Extra Expense; or
4. Extended Business Income.

The amounts of insurance stated in the interruption Of Computer Operations Additional Coverage and the Newly Acquired Locations Coverage Extension apply in accordance with the terms of those coverages and are separate from the Limit(s) Of Insurance shown in the Declarations for any other coverage.
2) Policy Overview

C. Loss Conditions
The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

1. Appraisal
If we and you disagree on the amount of Net Income and operating expense or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser.

The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and operating expense or amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

a. Pay its chosen appraiser; and
b. Bear the other expenses of the appraisal and umpire equally.
If there is an appraisal, we will still retain our right to deny the claim.
2) Policy Overview

Coverage typically found in:

1) **Commercial property policy.** Many commercial property insurance policies include business interruption coverage, either within the body of the policy or as an endorsement.

2) **Business Owner’s Policy (BOP).** BOP policies are tailored to the needs of small-business owners and combine property, liability, and business interruption coverage in one policy.

3) **Separate stand-alone business interruption policy.**
2) Policy Overview

**Actual loss sustained:** Business income coverage covers the actual loss sustained by the insured as a result of direct physical loss or damage to the insured’s property by a peril not otherwise excluded from the policy.

The insurer is only obligated to pay if the insured actually sustained an interruption of business leading to a business income loss. If the insured does sustain a business income loss, the extent of the insurer’s obligation is limited to the dollar amount of loss actually sustained, but not to exceed the applicable policy limit.
2) Policy Overview

**Business income:** Usually, the carrier is liable for the reduction in net income that results from suspension of operations—whether wholly or partially—due to a physical loss at the insured’s premises. This following commonly used definition of business income is intended to clarify what sums can be included when calculating the amount of loss.

“Business income includes the net income (net profit or loss before income taxes) that would have been earned or incurred by the insured and the continuing normal operating expenses incurred, including payroll.”
2) Policy Overview

**Period of restoration**: Insurers are liable for the loss of business income only during the period of restoration, which is often defined as the length of time required to rebuild, repair, or replace the damaged or destroyed property. The period of restoration begins when the physical loss or damage occurs; it ends when the property should, with reasonable speed, be repaired or replaced.

Expiration of the policy does not end the period of restoration. As long as the physical loss occurs during the policy period, the business income coverage will provide coverage for the duration of the period of restoration, even if the policy expires before the period of restoration ends.
2) Policy Overview

The business income endorsement published by the Insurance Service Office (ISO)—as well as some insurer forms—includes a 30-day extended period of restoration beyond the standard period of restoration (the period from the time of loss until the time of repair or replacement).

However, the insured may require more than this 30-day limit. To address this issue, an insured may elect to increase this limit from 30 days to any multiple of 30 days up to 720 days. This is accomplished by purchasing the extended period of indemnity optional endorsement offered through ISO.
2) Policy Overview

As can be seen by the review of the coverage language, in addition to coverage for business income, the business income endorsement of the property policy can provide other coverages, known as “additional coverages.” An example of an “additional coverage” is extra expense.
Extra expense is defined as the necessary expense incurred by the insured during the period of restoration that it would not have been subjected to if there had been no physical loss to real or personal property caused by a covered peril.

Note that when a business income loss occurs, the insured is obligated to take reasonable steps to try to avert or minimize such loss: Any expenses incurred to reduce the loss are covered as part of the business income and extra expense coverage. The insurer will typically limit such expenses to the point that such expenses reduce the business income claim. **In other words, the insurer will not pay any part of the expense that is more than the claim itself.**
2) Policy Overview

Additionally, the business income endorsement section of property policies can include “extensions of coverage,” wherein the insured’s policy will insure against business income losses resulting from a variety of causes, including the following:

- Service interruption
- Contingent business interruption
- Leader property
- Interruption by civil or military authority
3) Claims Process

- Identify Type of Business Income/Interruption Loss
- Types of information gathered from insured
- Other areas of investigation
- Need for retention of expert/forensic accountant
- Other Typical Claims issues
3) Claims Process

- Report of Claims to agent or insurer.
- Insurer or agent will provide assistance with responding to loss and filing claim.
- Insurer may send an adjuster to inspect the property.
- Retention of attorney
- Follow steps outlined in policy for reporting claim
3) Claims Process

- Provide proof of loss - A signed, sworn proof of loss containing the information requested to investigate the claim. This must be done typically within 60 days after the initial insurer request. Basis of claim.
- Inspection of books and records.
3) Claims Process

- To receive a business income settlement, insured must be able to show business’s net income and continuing normal operating expenses incurred, including payroll, both before and after the event that disrupted insured’s business.

- Examination of financial records over several years to determine income, with most recent years being most relevant.
• Obtain detailed records of:
  – Ongoing business activity and transactions, if any, while you recover from the event.
  – Expenses associated with operating in a temporary location.
  – Ongoing expenses that you must pay even if your business is closed, such as utility or advertising costs.
3) Claims Process

• Other issues involved in claims process
Concluding Remarks

• Questions?
BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F. Definitions.

A. Coverage

1. Business Income

   Business Income means the:
   a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
   b. Continuing normal operating expenses incurred, including payroll.

   For manufacturing risks, Net Income includes the net sales value of production.

   Coverage is provided as described and limited below for one or more of the following options for which a Limit Of Insurance is shown in the Declarations:

   (1) Business Income Including "Rental Value".
   (2) Business Income Other Than "Rental Value".
   (3) "Rental Value".

   If option (1) above is selected, the term Business Income will include "Rental Value". If option (3) above is selected, the term Business Income will mean "Rental Value" only.

   If Limits of Insurance are shown under more than one of the above options, the provisions of this Coverage Part apply separately to each.

   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". The "suspension" must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit Of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in a vehicle, the described premises include the area within 100 feet of such premises.

   With respect to the requirements set forth in the preceding paragraph, if you occupy only part of a building, your premises means:

   (a) The portion of the building which you rent, lease or occupy;
   (b) The area within 100 feet of the building or within 100 feet of the premises described in the Declarations, whichever distance is greater (with respect to loss of or damage to personal property in the open or personal property in a vehicle);
   (c) Any area within the building or at the described premises, if that area services, or is used to gain access to, the portion of the building which you rent, lease or occupy.

2. Extra Expense

   a. Extra Expense Coverage is provided at the premises described in the Declarations only if the Declarations show that Business Income Coverage applies at that premises.

   b. Extra Expense means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.

   We will pay Extra Expense (other than the expense to repair or replace property) to:

   (1) Avoid or minimize the "suspension" of business and to continue
operations at the described premises or at replacement premises or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location.

(2) Minimize the "suspension" of business if you cannot continue "operations".

We will also pay Extra Expense to repair or replace property, but only to the extent it reduces the amount of loss that otherwise would have been payable under this Coverage Form.

3. Covered Causes Of Loss, Exclusions And Limitations

See applicable Causes Of Loss form as shown in the Declarations.

4. Additional Limitation - Interruption Of Computer Operations

a. Coverage for Business Income does not apply when a "suspension" of "operations" is caused by destruction or corruption of electronic data, or any loss or damage to electronic data, except as provided under the Additional Coverage, Interruption Of Computer Operations.

b. Coverage for Extra Expense does not apply when action is taken to avoid or minimize a "suspension" of "operations" caused by destruction or corruption of electronic data, or any loss or damage to electronic data, except as provided under the Additional Coverage, Interruption Of Computer Operations.

c. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.

d. This Additional Limitation does not apply when loss or damage to electronic data involves only electronic data which is integrated in and operates or controls a building's elevator, lighting, heating, ventilation, air conditioning or security system.

5. Additional Coverages

a. Civil Authority

In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations.

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

(1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and

(2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority Coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

Civil Authority Coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:

(1) Four consecutive weeks after the date of that action; or

(2) When your Civil Authority Coverage for Business Income ends; whichever is later.
b. Alterations And New Buildings

We will pay for the actual loss of Business Income you sustain and necessary Extra Expense you incur due to direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss to:

(1) New buildings or structures, whether complete or under construction;
(2) Alterations or additions to existing buildings or structures; and
(3) Machinery, equipment, supplies or building materials located on or within 100 feet of the described premises and:
   (a) Used in the construction, alterations or additions; or
   (b) Incidental to the occupancy of new buildings.

If such direct physical loss or damage delays the start of "operations", the "period of restoration" for Business Income Coverage will begin on the date "operations" would have begun if the direct physical loss or damage had not occurred.

c. Extended Business Income

(1) Business Income Other Than "Rental Value"

If the necessary "suspension" of your "operations" produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:

(a) Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and

(b) Ends on the earlier of:
   (i) The date you could restore tenant occupancy, with reasonable speed, to the level which would generate the "Rental Value" that would have existed if no direct physical loss or damage had occurred; or
   (ii) 60 consecutive days after the date determined in (2)(a) above.

However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

(2) "Rental Value"

If the necessary "suspension" of your "operations" produces a "Rental Value" loss payable under this policy, we will pay for the actual loss of "Rental Value" you incur during the period that:

(a) Begins on the date property is actually repaired, rebuilt or replaced and tenantability is restored; and

(b) Ends on the earlier of:
   (I) The date you could restore tenant occupancy, with reasonable speed, to the level which would generate the "Rental Value" that would have existed if no direct physical loss or damage had occurred; or
   (II) 60 consecutive days after the date determined in (2)(a) above.

However, Extended Business Income does not apply to loss of "Rental Value" incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of "Rental Value" must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

d. Interruption Of Computer Operations

(1) Under this Additional Coverage, electronic data has the meaning described under Additional Limitation - Interruption Of Computer Operations.
(2) Subject to all provisions of this Additional Coverage, you may extend the insurance that applies to Business Income and Extra Expense to apply to a "suspension" of "operations" caused by an interruption in computer operations due to destruction or corruption of electronic data due to a Covered Cause of Loss. However, we will not provide coverage under this Additional Coverage when the Additional Limitation – Interruption Of Computer Operations does not apply based on Paragraph A.4.d. therein.

(3) With respect to the coverage provided under this Additional Coverage, the Covered Causes of Loss are subject to the following:

(a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage, Interruption Of Computer Operations, is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.

(b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage, Interruption Of Computer Operations, includes Collapse as set forth in that form.

(c) If the Causes Of Loss form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Interruption Of Computer Operations.

(d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for an interruption related to manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, maintain, repair or replace that system.

(4) The most we will pay under this Additional Coverage, Interruption Of Computer Operations, is $2,500 (unless a higher limit is shown in the Declarations) for all loss sustained and expense incurred in any one policy year, regardless of the number of interruptions or the number of premises, locations or computer systems involved. If loss payment relating to the first interruption does not exhaust this amount, then the balance is available for loss or expense sustained or incurred as a result of subsequent interruptions in that policy year. A balance remaining at the end of a policy year does not increase the amount of insurance in the next policy year. With respect to any interruption which begins in one policy year and continues or results in additional loss or expense in a subsequent policy year(s), all loss and expense is deemed to be sustained or incurred in the policy year in which the interruption began.

(5) This Additional Coverage, Interruption Of Computer Operations, does not apply to loss sustained or expense incurred after the end of the "period of restoration", even if the amount of insurance stated in (4) above has not been exhausted.

6. Coverage Extension

If a Coinsurance percentage of 50% or more is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

Newly Acquired Locations

a. You may extend your Business Income and Extra Expense Coverages to apply to property at any location you acquire other than fairs or exhibitions.

b. The most we will pay under this Extension, for the sum of Business Income loss and Extra Expense incurred, is $100,000 at each location, unless a higher limit is shown in the Declarations.
c. Insurance under this Extension for each newly acquired location will end when any of the following first occurs:

(1) This policy expires;
(2) 30 days expire after you acquire or begin to construct the property; or
(3) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property.

The Additional Condition, Coinsurance, does not apply to this Extension.

B. Limits Of Insurance

The most we will pay for loss in any one occurrence is the applicable Limit Of Insurance shown in the Declarations.

Payments under the following coverages will not increase the applicable Limit of Insurance:

1. Alterations And New Buildings;
2. Civil Authority;
3. Extra Expense; or
4. Extended Business Income.

The amounts of insurance stated in the interruption Of Computer Operations Additional Coverage and the Newly Acquired Locations Coverage Extension apply in accordance with the terms of those coverages and are separate from the Limit(s) Of Insurance shown in the Declarations for any other coverage.

C. Loss Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions:

1. Appraisal

If we and you disagree on the amount of Net Income and operating expense or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser.

The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and operating expense or amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

a. Pay its chosen appraiser; and
b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

2. Duties In The Event Of Loss

a. You must see that the following are done in the event of loss:

(1) Notify the police if a law may have been broken.
(2) Give us prompt notice of the direct physical loss or damage. Include a description of the property involved.
(3) As soon as possible, give us a description of how, when and where the direct physical loss or damage occurred.

(4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.

(5) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

(6) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.

(7) Cooperate with us in the investigation or settlement of the claim.

(8) If you intend to continue your business, you must resume all or part of your "operations" as quickly as possible.

b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the
claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

3. Loss Determination
   a. The amount of Business Income loss will be determined based on:
      (1) The Net Income of the business before the direct physical loss or damage occurred;
      (2) The likely Net Income of the business if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;
      (3) The operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct physical loss or damage; and
      (4) Other relevant sources of information, including:
         (a) Your financial records and accounting procedures;
         (b) Bills, invoices and other vouchers; and
         (c) Deeds, liens or contracts.
   b. The amount of Extra Expense will be determined based on:
      (1) All expenses that exceed the normal operating expenses that would have been incurred by "operations" during the "period of restoration" if no direct physical loss or damage had occurred. We will deduct from the total of such expenses:
         (a) The salvage value that remains of any property bought for temporary use during the "period of restoration", once "operations" are resumed; and
         (b) Any Extra Expense that is paid for by other insurance, except for insurance that is written subject to the same plan, terms, conditions and provisions as this insurance; and
      (2) Necessary expenses that reduce the Business Income loss that otherwise would have been incurred.
   c. Resumption Of Operations
      We will reduce the amount of your:
      (1) Business Income loss, other than Extra Expense, to the extent you can resume your "operations", in whole or in part, by using damaged or undamaged property (including merchandise or stock) at the described premises or elsewhere.
      (2) Extra Expense loss to the extent you can return "operations" to normal and discontinue such Extra Expense.
   d. If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.

4. Loss Payment
   We will pay for covered loss within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part, and:
   a. We have reached agreement with you on the amount of loss; or
   b. An appraisal award has been made.

D. Additional Condition
   COINSURANCE
   If a Coinsurance percentage is shown in the Declarations, the following condition applies in addition to the Common Policy Conditions and the Commercial Property Conditions.
   We will not pay the full amount of any Business Income loss if the Limit of Insurance for Business Income is less than:
   1. The Coinsurance percentage shown for Business Income in the Declarations; times
   2. The sum of:
      a. The Net Income (Net Profit or Loss before income taxes), and
      b. Operating expenses, including payroll expenses, that would have been earned or incurred (had no loss occurred) by your "operations" at the described premises for the 12 months following the inception, or last previous anniversary date, of this policy (whichever is later).
Instead, we will determine the most we will pay using the following steps:

Step (1): Multiply the Net Income and operating expense for the 12 months following the inception, or last previous anniversary date, of this policy by the Coinsurance percentage;

Step (2): Divide the Limit of Insurance for the described premises by the figure determined in Step (1); and

Step (3): Multiply the total amount of loss by the figure determined in Step (2).

We will pay the amount determined in Step (3) or the limit of insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

In determining operating expenses for the purpose of applying the Coinsurance condition, the following expenses, if applicable, shall be deducted from the total of all operating expenses:

1. Prepaid freight — outgoing;
2. Returns and allowances;
3. Discounts;
4. Bad debts;
5. Collection expenses;
6. Cost of raw stock and factory supplies consumed (including transportation charges);
7. Cost of merchandise sold (including transportation charges);
8. Cost of other supplies consumed (including transportation charges);
9. Cost of services purchased from outsiders (not employees) to resell, that do not continue under contract;
10. Power, heat and refrigeration expenses that do not continue under contract (if Form CP 15 11 is attached);
11. All payroll expenses or the amount of payroll expense excluded (if Form CP 15 10 is attached); and
12. Special deductions for mining properties (royalties unless specifically included in coverage; actual depletion commonly known as unit or cost depletion — not percentage depletion; welfare and retirement fund charges based on tonnage; hired trucks).

Example 1 (Underinsurance)

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been:
- Net Income: $400,000
- Operating expenses: $200,000
- The Coinsurance percentage is: 50%
- The Limit of Insurance is: $150,000
- The amount of loss is: $80,000

Step (1): $400,000 x 50% = $200,000 (the minimum amount of insurance to meet your Coinsurance requirements)
Step (2): $150,000 ÷ $200,000 = .75
Step (3): $80,000 x .75 = $60,000

We will pay no more than $60,000. The remaining $20,000 is not covered.

Example 2 (Adequate Insurance)

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been:
- Net Income: $400,000
- Operating expenses: $200,000
- The Coinsurance percentage is: 50%
- The Limit of Insurance is: $200,000
- The amount of loss is: $80,000

The minimum amount of insurance to meet your Coinsurance requirement is $200,000 ($400,000 x 50%). Therefore, the Limit of Insurance in this example is adequate and no penalty applies. We will pay no more than $80,000 (amount of loss).

This condition does not apply to Extra Expense Coverage.

E. Optional Coverages

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item.

1. Maximum Period Of Indemnity
   a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.
   b. The most we will pay for the total of Business Income loss and Extra Expense is the lesser of:
(1) The amount of loss sustained and expenses incurred during the 120 days immediately following the beginning of the "period of restoration"; or

(2) The Limit Of Insurance shown in the Declarations.

2. Monthly Limit Of Indemnity

a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.

b. The most we will pay for loss of Business Income in each period of 30 consecutive days after the beginning of the "period of restoration" is:

(1) The Limit of Insurance, multiplied by

(2) The fraction shown in the Declarations for this Optional Coverage.

Example

When: The Limit of Insurance is: $120,000
The fraction shown in the Declarations for this Optional Coverage is: 1/4
The most we will pay for loss in each period of 30 consecutive days is: $30,000
($120,000 x 1/4 = $30,000)

If, in this example, the actual amount of loss is:

Days 1–30: $40,000
Days 31–60: $20,000
Days 61–90: $30,000

$90,000

We will pay:

Days 1–30: $30,000
Days 31–60: $20,000
Days 61–90: $30,000

$80,000

The remaining $10,000 is not covered.

3. Business Income Agreed Value

a. To activate this Optional Coverage:

(1) A Business Income Report/Work Sheet must be submitted to us and must show financial data for your "operations":

(a) During the 12 months prior to the date of the Work Sheet; and

(b) Estimated for the 12 months immediately following the inception of this Optional Coverage.

(2) The Declarations must indicate that the Business Income Agreed Value Optional Coverage applies, and an Agreed Value must be shown in the Declarations. The Agreed Value should be at least equal to:

(a) The Coinsurance percentage shown in the Declarations; multiplied by

(b) The amount of Net Income and operating expenses for the following 12 months you report on the Work Sheet.

b. The Additional Condition, Coinsurance, is suspended until:

(1) 12 months after the effective date of this Optional Coverage; or

(2) The expiration date of this policy; whichever occurs first.

c. We will reinstate the Additional Condition, Coinsurance, automatically if you do not submit a new Work Sheet and Agreed Value:

(1) Within 12 months of the effective date of this Optional Coverage; or

(2) When you request a change in your Business Income Limit of Insurance.

d. If the Business Income Limit of Insurance is less than the Agreed Value, we will not pay more of any loss than the amount of loss multiplied by:

(1) The Business Income Limit of Insurance; divided by

(2) The Agreed Value.

Example

When: The Limit of Insurance is: $100,000
The Agreed Value is: $200,000
The amount of loss is: $80,000

Step (1): $100,000 + $200,000 = .50
Step (2): .50 x $80,000 = $40,000

We will pay $40,000. The remaining $40,000 is not covered.

4. Extended Period Of Indemnity

Under Paragraph A.5.c., Extended Business Income, the number 60 in Subparagraphs 1(b) and 2(b) is replaced by the number shown in the Declarations for this Optional Coverage.
F. Definitions

1. "Finished stock" means stock you have manufactured.
   "Finished stock" also includes whiskey and alcoholic products being aged, unless there is a Coinsurance percentage shown for Business Income in the Declarations.
   "Finished stock" does not include stock you have manufactured that is held for sale on the premises of any retail outlet insured under this Coverage Part.

2. "Operations" means:
   a. Your business activities occurring at the described premises; and
   b. The tenantability of the described premises, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.

3. "Period of restoration" means the period of time that:
   a. Begins:
      (1) 72 hours after the time of direct physical loss or damage for Business Income Coverage; or
      (2) Immediately after the time of direct physical loss or damage for Extra Expense Coverage;
   caused by or resulting from any Covered Cause of Loss at the described premises; and
   b. Ends on the earlier of:
      (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
      (2) The date when business is resumed at a new permanent location.
   "Period of restoration" does not include any increased period required due to the enforcement of or compliance with any ordinance or law that:
      (1) Regulates the construction, use or repair, or requires the tearing down, of any property; or
      (2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".
   The expiration date of this policy will not cut short the "period of restoration".

4. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

5. "Rental Value" means Business Income that consists of:
   a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred as rental income from tenant occupancy of the premises described in the Declarations as furnished and equipped by you, including fair rental value of any portion of the described premises which is occupied by you; and
   b. Continuing normal operating expenses incurred in connection with that premises, including:
      (1) Payroll; and
      (2) The amount of charges which are the legal obligation of the tenant(s) but would otherwise be your obligations.

6. "Suspension" means:
   a. The slowdown or cessation of your business activities; or
   b. That a part or all of the described premises is rendered untenantable, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.