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Duff on Hospitality Law

The Changing Meaning of the Word "Suspension" in Hospitality Losses

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The success of our hospitality practice through the years has relied on the skills and experience of a number of industry consultants and advisors. John Hutson of the Seattle office of Navigant Consulting is one of those advisors. John is an Associate Director in Navigant's Dispute, Investigation & Economics practice. John has a deep specialization in the hospitality industry and regularly speaks on hospitality damage valuation issues across the country. In light of John's upcoming business interruption presentation at the Hospitality Law Conference, we asked John to provide an update on damage valuation in the industry. In his post, John discusses how insurance companies are attempting to redefine and reinterpret "suspension of operations" for hospitality firms. Thank you John for your many contributions.

Notwithstanding my 18 years of experience in valuing commercial economic damages, every once in a while I get caught off guard. The insurance companies will craft a new argument, to deny the recovery of damages and to see if the argument can get some traction either in the settlement process or in the courts. The court's decision in *H&H Hospitality LLC v. Discovery Specialty Ins. Co.*, 2011 U.S. Dist. LEXIS 146055 (S.D. Texas Dec. 20, 2011), demonstrates the application of one of these new arguments.

In my practice, I've always quantified damages assuming that a complete cessation of operations, a slowdown in operations, or a directly related decrease in revenue should be quantified and considered when valuing business interruption damages. The policy terms related to "suspension of operations" were never a focus of mine during my valuation and, perhaps more importantly, never a focus of the adjuster during the adjustment and settlement of the claim.

Apparently, insurers are attempting to redefine, or in their opinion clarify, "suspension of operations". Now, some carriers are arguing that "suspension of operations" means a complete and total cessation of *all* operations. For example, under the proposed new interpretation of "suspension of operations," if a hotel has any rooms open, any bars open, any restaurants open, and they earn even $1 from any ongoing operations, its operations are not considered "suspended" under the policy. Accordingly, no business interruption damages are owed during the period of suppressed, or reduced, operations.

Unfortunately, some judges agree with the insurance companies on this issue, as evidenced in the above-referenced ruling. The judge noted that other insurance policies provided coverage for the "necessary interruption of business, whether total or partial." The conclusion was that if a policy allowed for "partial interruption" then slowdowns could be considered, but if a policy simply allows payment for "suspension" that it must be a complete and total cessation of all operations.

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The above interpretation by the insurance company, which was upheld by the court, is contrary to the interpretation I have seen throughout my entire career. I suggest that all hospitality firms review their policies, with their insurance brokers and attorneys, to ensure they are covered for "partial interruption" rather than "suspension" in the event of a disaster.

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Tagged as business interruption, insurance, Navigant Consulting, suspension of operations

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