

## **When the Show Cannot Go On: Maximizing Insurance Recoveries for Event Cancellations**

**The Situation:** On the evening of July 13, 2019, a massive blackout struck Manhattan's West Side, prompting the cancellation of 26 out of 30 Broadway performances and postponement of the second night of Jennifer Lopez's sold-out Madison Square Garden concert series.

**The Result:** Losses to events cancelled or postponed by the outage are estimated in the millions of dollars.

**Looking Ahead:** Commercial policyholders should proactively review the terms of their event cancellation insurance policies well in advance of scheduled events.

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This past month, New Yorkers experienced one of their largest blackouts in recent history, when a sudden power failure on July 13 cloaked a vast stretch of Manhattan's West Side in darkness. All told, the five-hour power failure prompted the cancellation of 26 out of 30 Broadway performances scheduled for that evening and the postponement of the second night of Jennifer Lopez's sold-out Madison Square Garden concert series, causing estimated losses in the millions of dollars.

This recent blackout is just the latest reminder of the vulnerability of live events to unforeseen disruptions. Fortunately, a number of affected enterprises will have purchased event cancellation insurance to guard against their attendant losses. While a critical risk management tool for event-related businesses (e.g., venues, organizers, promoters, broadcasters, and vendors), not all event cancellation insurance policies are created equal. Below are some helpful tips for policyholders to maximize the value of such policies.

### **Review the Fine Print of Your Event Cancellation Coverage**

Event cancellation insurance generally protects against financial losses arising out of the cancellation, abandonment, interruption, or postponement of insured events due to a covered peril beyond the policyholder's control.

While there are no "standard" policy forms and their specific terms can vary considerably, event cancellation policies are available for many types of events (e.g., concerts, conventions, festivals, sporting events, corporate functions, and weddings) and can insure a wide array of perils (e.g., adverse weather, unexpected service interruptions, and the non-appearance of key performers).

As with their perils insured, event cancellation policies can also cover various forms of economic loss. While certain policies limit recovery to the policyholder's out-of-pocket costs incurred prior to an event's cancellation or postponement, other policies cover lost profits and revenue, as well as any additional expenses associated with rescheduling or relocating the event.

Policyholders should carefully review their event cancellation coverage at the time of purchase, particularly considering that it is often possible to negotiate the removal or modification of various policy exclusions, in some case without any increase in premium.

To that end, policyholders should keep in mind the following:

- Event cancellation policies do not uniformly address event disruptions occasioned by adverse weather, terrorism, communicable disease outbreaks, and labor disputes. Some policies cover such cancellations and postponements attributable to these perils, while others do not. These provisions should always be carefully examined to ensure that they align with your enterprise's needs and risk appetite.
- While many event cancellation policies also provide so-called "non-appearance" coverage, which generally insures against cancellations or postponements when key personnel (e.g., artists and speakers) are unable to attend or perform at a scheduled event, other policies exclude such losses unless specifically endorsed. Policyholders accordingly should not assume that their event cancellation policy automatically contains "non-appearance" coverage and, even where included, should carefully examine the scope of such coverage.
- Policyholders should also consider purchasing event cancellation policies that expressly provide coverage for "reduced attendance" or event "curtailment," which should ensure coverage for losses in connection with events that are impacted by a covered peril but not cancelled or rescheduled.

### **Timely Comply with Notice, Proof of Loss, and Suit-Limitation Provisions**

Event cancellation policies typically contain two important notice requirements, which policyholders should take care to satisfy: (i) initial notice to the insurance company of the loss; and (ii) filing with the insurance company a sworn "proof of loss." While particular notice requirements vary by policy and applicable state law, many event cancellation policies expressly require that the policyholder comply with these requirements within a specific time period (e.g., 30 or 60 days) from the date of the event cancellation, interruption, or postponement.

Likewise, event cancellation policies often require a policyholder to commence litigation against its insurer within 12 or 24 months from the date of the event cancellation, interruption, or postponement. A policyholder's failure to timely meet these deadlines may unnecessarily complicate its insurance recovery, or, worse, insurance companies may argue that such a failure to meet these deadlines in a timely fashion results in a forfeiture of coverage.

In addition to timing, policyholders should also follow any instructions set forth in the insurance policy concerning the manner of notice (e.g., whether the notice must be in writing, to whom notice must be given, and what information initially must be provided).

Policyholders should also bear in mind that provisions specifying deadlines to supply a "proof of loss" or file suit can be extended by written agreement, provided the extensions are to a date certain and not indefinite. Indeed, because in a number of jurisdictions the filing of a proof of loss triggers a separate deadline for the completion of the insurance company's own claim adjustment, many insurance companies routinely consent to such extensions.

At the same time, policyholders should keep in mind that, depending upon the circumstances surrounding an event cancellation or postponement (i.e., where physical loss or damage to insured property is involved), the business interruption and contingent business interruption coverage of their commercial property insurance programs may also potentially respond with coverage for certain losses.

### **Document the Loss and Claims Adjustment Process**

In order to obtain full insurance reimbursement, it is essential that policyholders keep a complete and accurate record of their losses. As soon as they become aware of an impending event cancellation or postponement, policyholders should immediately begin preparing a detailed record of all losses in support of their claim. This should include maintaining copies of all invoices, receipts, refunds, cancelled checks, and related contracts, as well as any other potentially relevant documentation and correspondence regarding the event or the cause(s) of cancellation or postponement. Given that historical data may also help to support their lost revenue calculations, it is also prudent for policyholders to maintain financial records for past events.

Policyholders should likewise maintain a complete written record of all claim-related communications exchanged with their insurance companies (e.g., claim submissions, responses to information requests, and any telephonic conferences held). Policyholders should also be sure to memorialize any insurance company inaction (e.g., missed deadlines, cancelled meetings, or late payments) as part of their claims correspondence. Doing so not only helps to facilitate the claims adjustment process, but it is often useful to policyholders in any subsequent insurance coverage litigation.

While the foregoing has identified some of the insurance considerations implicated by event disruptions, businesses interested in proactively managing their exposure will accordingly be well-served to evaluate the adequacy of the insurance coverage provided under their existing event cancellation insurance programs before the potential onset of such losses.

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### **Two Key Takeaways**

1. Event cancellation insurance policies can vary significantly in scope and should be carefully examined at the time of purchase.
2. To maximize insurance recoveries under their existing event cancellation insurance programs, policyholders should prepare a detailed record of their losses and timely comply with notice, proof of loss, and suit limitation provisions.