



# Forrest Sherer

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## THE INSURANCE NEWSLETTER

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### The Value of Business Income Insurance

Many readers will remember news reports a few years ago of a fire at a factory in Massachusetts that manufactured fleece used in winter clothing. The early December fire substantially destroyed the factory, and threw hundreds of employees out of work in the weeks just before Christmas.

The fire itself was run of the mill news; what made headlines was the subsequent report that the owner had notified all his workers that they would remain on the payroll, not only through the Christmas season but until the plant was rebuilt and back in operation.

How could he do this? With Business Income insurance. This important coverage was added to his fire insurance policy; not only did he recover the full cost to rebuild his factory, he also was paid for all lost income, profit, and continuing expenses he incurred after the fire, including payroll, until he could rebuild and reopen his business.

Businesses usually think first of buying the proper amount of insurance on their buildings and contents. That should provide for adequate funds to repair or rebuild after a loss, but what about the income and profit that's lost until repairs are made and operations can be resumed? And how about all the costs and expenses that continue during the period of reconstruction, when there is no revenue to pay for them? These also represent important insurable values.

This is important but often misunderstood coverage for any business, especially one that relies on just one location, plant or facility to generate its revenue and income. If that facility is destroyed by fire or other insured peril, the insurance payment the business receives from business income

coverage can very often mean the difference between continuing in business, or shutting down forever, even though the direct loss might be fully paid.

Determining how much coverage should be carried can be a challenge, but the insurance industry provides a worksheet to assist business owners in valuing this risk. The business income worksheet can walk you through the steps needed to quantify this risk; it also identifies key customizing features to tailor the coverage to your specific needs.

The calculation starts with your estimate of sales or revenues generated from the facility in question. From that you subtract all expenses that would not continue after a loss shuts you down; at minimum these would include cost of goods sold, cost of services from outsiders, and utilities (power, heat and refrigeration for example).

Subtract noncontinuing expenses from revenue and you get your business income insurance basis. You can then further customize this. The factory owner mentioned earlier included ordinary payroll in his calculation, but the form allows for ordinary payroll to be limited or even excluded if your situation warrants. This coverage normally stops paying once you reopen for business, but it's not uncommon for sales to resume at a lower level for a period of time after reopening, so you can buy an extended period of indemnity to cover that. Other customizing endorsements are available.

Like most other standard property forms, this coverage is subject to coinsurance (which in property insurance means you agree to insure to some percentage of your actual exposure). Standard business income coverage allows for coinsurance of 50% to 80%, in ten per cent intervals. Since you are calculating annual BI values, these percentages are

best thought of in terms of time, i.e., you would choose 50% coinsurance and insure to that limit if you thought you could rebuild and reopen in six months time. Also like other property forms, if you furnish adequate information to your underwriter in advance, you can get an agreed value clause, eliminating coinsurance concerns.

Business interruption insurance is intended to help a company get back to the position it would have been in had no loss occurred, by paying for the actual loss of business income it sustains. Actual loss sustained is best defined as what it would have earned if there had been no loss, minus what it actually did earn.

This means that to determine the right amount of insurance, you need to forecast anticipated revenues as accurately as possible, taking into account not only past and current trends, but also the anticipated future impact of economic conditions. The assumptions you use in determining the proper amount of insurance will be based on your best forecasts of future conditions, at the time you are making them. The thing to remember about this coverage is that if you are completing this worksheet ninety days in advance of your renewal, then you are actually trying to peer as much as two years or more into the future (three months before the policy renews plus an annual policy term, plus the potential period of recovery for a loss that might occur near the end of the policy term).

Given current economic conditions, assumptions you made when completing a business income worksheet may no longer accurately represent your business. As a result, it is more important than ever for us to be proactive in working with you to review your existing business interruption coverage. You can't anticipate every possible scenario that could occur in the future, and you don't want to be overpaying for insurance if business conditions have deteriorated; you also don't want to be underinsured if conditions improve.

Claims professionals can all recite cases where direct damage may have been small in a loss, but business income loss was huge due to interruption of a key part of a business. This is a complicated form of insurance but, for many businesses, getting it right can mean the difference between surviving a loss, or closing.

## Third Party EPL

Here's a true story: A store sold merchandise to a customer, and sent a truck and delivery crew to the customer's house to deliver and set up the merchandise. While in the customer's home, and within earshot of the customer (and her children), the crew, joking among themselves, made sexually suggestive comments and jokes. The customer was outraged; litigation ensued.

The obvious best way to avoid this type of claim is through training and monitoring your employees, but the good news is there is some insurance that provides coverage. Employment practices liability (EPL) policies already provide coverage for employers for claims from their own employees allegations of sexual harassment. Many, perhaps most of these policies will also allow you to endorse them to cover similar claims from outside third parties, as in this example.

Some EPL policies may already include this coverage, especially policies designed for private companies. Most major underwriters of this type of coverage will also consider adding the coverage for third party EPL claims by endorsement to their policy. Best of all, this is usually a very inexpensive additional coverage.

Give us a call if you think you might have a need for this coverage.

## The Value of Managed Care in Controlling Workers Compensation Costs

The number and size of claims you have directly drives the cost of your workers compensation insurance; if you want to manage your workers compensation insurance cost you have to manage claims. One of the most valuable tools for that purpose is a managed care program. This is nothing more than an effort by the employer to direct the medical care of an injured worker to assure that such care is timely, appropriate and effective. It can be a formal program, in conformance with various state workers compensation statutes in those states that allow it. In other states, and again to the extent that state law allows, it can be a voluntary program.

Employers and employees both win with managed care. When a prequalified network of medical providers is established to treat job related injuries, physicians that are selected for the network can satisfy several objectives. First and foremost, they should be specialists in treating work related injuries. If you have the type of business that sees a number of lifting or material handling injuries, for example, you'll want the best orthopedists you can find in your network, with particular skill in treating back injuries.

You'll also want them to see your employees quickly (no three week waits for appointments), provide their medical reports to you and your claims adjusters quickly, be willing to work with you to return employees to work as soon as possible in some modified capacity that recognizes and accommodates the injured employee's diminished work capacity, and, perhaps most important, you want them to answer their phone and take your calls.

Your employees benefit, too. The way medical services are delivered in this country is complicated and confusing for even the most sophisticated folks. Your average employee might feel most comfortable seeing his family doctor for a job injury, but the physician who treats Granny's lumbago, the toddler's ear infection, and sister's migraines is rarely the right one to be dealing with work injuries. If you can get that injured employee to the doctor best qualified to handle his particular ailment, chances are he gets better treatment, recovers more quickly, and gets back to work faster.

Many states have provisions in their workers compensation statutes that allow for and define the parameters of such programs. The most progressive states recognize the value of these plans and actively encourage employers to establish managed care networks for work related injuries.

The first step in implementing such a program is to identify a gatekeeper, a doctor or occupational health facility that will serve as first treater for most work injuries (the most serious accidents will still call for an immediate trip to the ER). You'll want to work with that doctor to establish your expectations about timely treatment and communication. If that doctor has some understanding of the type of work your employees do, and can release them back to work in some modified duty format to accommodate their temporary physical limitations while they recover from their injury, even better.

You'll also want to identify a group of selected specialists. Back and joint sprains and strains are usually the most costly and frustrating work injury claims; at minimum you'll want good orthopedists represented. If your business involves a particular type of injury risk you might also seek representatives of specialties to address that (for example, a foundry might want burn specialists in their network).

In order to gain the best advantage from a managed care program, you'll need to incorporate some controls. For example, employees will need to be educated about the program. They need to know what you are doing, and why. Delivering better quality occupational medical care is a benefit to them, and they should know that.

You will need to develop a clear set of instructions for employees, telling them what to do if they suffer a work related injury. These should include a form they take with them to your first treating physician, identifying them as your employee, and part of your MCP. Your first treater should also have instructions, to immediately communicate back to you their findings after seeing your employee, and to refer to specialists within your network if called for.

You should also have a mandatory transitional duty return to work program, consistent with state laws, that will accommodate an injured employee's physical restrictions while recovering from their injury.

Your insurance company and claims adjusters also need to know what you are doing. The cost of workers compensation claims can be managed, but you, your selected doctors, and your claims adjusters will all need to be working as a team. Since it's ultimately your dollars at stake, you'll want to be the one quarterbacking the process and being sure that your whole team is working together.

## **More About Additional Insureds**

It's common, and common sense, to require contractors and service vendors to add you as an additional insured on their liability policy to cover any claims against you that might arise out of their work for you. Such businesses, in turn, are accustomed to such requests, and usually comply without incident.

The most common way they comply with these requirements is by having their liability policies endorsed with a blanket additional insured endorsement. This frees them from having to ask their insurance company for a specific endorsement for each customer or client who asks for this coverage; it's granted automatically as long as such additional insured status is a requirement for them to do business with you.

Here's the rub: the standard blanket additional insured endorsement will automatically provide this additional insured coverage, but only if there is a requirement for it in a *written* contract or agreement between you and them. Absent a written agreement, you will not be automatically covered.

Take an example: you hire a contractor for some renovations or construction on your property. He hires subcontractors, maybe just a fellow to drop off a dumpster or a couple of port-a-potties on the job site, maybe just a single sole proprietor subcontractor to handle a small specialized part of the job. These are phone calls, there is no written agreement. As a result, you have no additional insured protection for claims arising from their operations.

Contractors and service vendors should also beware of this situation; absent a written agreement, you may not be in compliance with your customer's requirements, something you should find out about before a loss occurs.

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## Employee Benefits

Forrest Sherer's Employee Benefit Department is committed to exceeding your expectations. Through our extensive training, experience, diligence, and continuing education, we are proud to offer a new service for your benefit.

We are teaming up to provide our current employee benefit clients a compliance alert. Forrest Sherer Insurance offers accurate and timely legislative updates and issues, which may affect your business liabilities. These updates are provided in an efficient format. We accomplish this through Employee Webinars, E-mail Blitzes, and Employee Newsletters. Some recent examples include the ARRA COBRA Subsidy, Medicare Part D notifications, and CHIPRA.

We welcome your questions and are happy to assist you. Please contact us to find out more information or go to our website –

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