

Understanding Insurance Coverage May Save Your Business From Disaster

By Steve Champlin, George Eck and Dan Brown

Attorneys from Dorsey recently helped Southern Minnesota Beet Sugar Cooperative (“SMBSC”) and its grower-members recover from two near-disastrous events. SMBSC is a grower-owned cooperative located in Renville, Minnesota and is in the business of processing sugarbeets into refined sugar. SMBSC and its growers experienced two significant disasters in recent years, both giving rise to insurance claims. Property, business interruption, crop insurance, and liability insurance are vital components in managing risk in most businesses. Insurance policies, however, are often difficult to understand and analyzing coverage provided by them can be very complex. The events that trigger coverage under insurance policies can involve a wide variety of actions, events and scenarios, only limited by the wondrous hand of fate.

The SMBSC Evaporator Claim.

It's every plant manager's nightmare. The call comes into the office that the evaporators weighing over 1,000,000 pounds have unexplainably crashed through the second story floor of the factory and are now lying wrecked on the first floor of the plant. Not only are the evaporators ruined, but the plant has to be shut down in the middle of the processing season until substitutes can be found and installed. The resulting shutdown cost SMBSC millions of dollars in lost revenue. Could it be recovered?

SMBSC submitted its claim for lost revenue to its insurance carrier. The cooperative maintained business interruption insurance, so a quick monetary recovery seemed likely. What the cooperative discovered was that the evaluation of the claim by the insurance carrier was very different from its own evaluation and the insurance carrier and the cooperative were soon at odds.

What followed was a 16-month odyssey that concluded in a federal court jury trial held in Minneapolis, Minnesota that resulted in a jury award of over \$19 million in favor of SMBSC against its insurance carrier for the business interruption claim. Steve Champlin successfully represented the cooperative in the lawsuit.

The Grower Crop Insurance Claims.

When it rains, it pours. In 2000, a substantial number of the member-growers of the cooperative experienced frost damage to their sugarbeet crops. Because the sugarbeets had suffered from frost damage, the cooperative was unable to process many of the sugarbeets. Although the growers reported the crop damage to their insurance carriers, the carrier denied coverage for nearly all of the claims.

Unlike the evaporator claim, the crop insurance policies required that any dispute about coverage be arbitrated in front of a three member arbitrator panel rather than determined by a jury in a courtroom. The claim also involved hundreds of growers who were the insureds, which was dramatically different from the evaporator claim in which the cooperative itself was the only insured. However, nearly all of the SMBSC growers decided to band together and collectively hire Dorsey to represent them in the crop insurance claims.

Similar to the business interruption claim, the crop insurance claim could not be resolved without a trial, or in the case of arbitration, a hearing. Ultimately, with the help of George Eck, Dan Brown and other Dorsey lawyers and staff, the growers were successful in receiving compensation for their crop losses.

Review Your Policies

Dorsey experience suggests that some businesses may not fully understand the policies they hold and their limitations. Moreover, some may not have thought through carefully how to respond when potential insurance claims arise. It is easy for mistakes to be made, at the time potential losses become known, that may affect recovery under insurance policies. Some of the recommendations made by Dorsey insurance attorneys are as follows:

It is important to fully understand both the coverage provided by your policy and the extent of your loss as quickly as possible. Describing a loss initially as significantly smaller than it turns out to be may make resolution of a claim difficult.

It is important to consider how the loss is described. Losses should be described in both internal and external communications in a manner consistent with coverage under the policy language, when it is reasonable to do so. Seemingly similar losses may fall into different categories of damage. In turn, different categories of damage may be affected by exclusions, limitations and other adverse policy provisions differently. Describing losses in a manner consistent with favorable policy terminology may assist in reaching a favorable resolution.

It is important to realize from the outset that if a claim does result in litigation, all internal and external communications related to the claim may be scrutinized by the insurance company's lawyer. For this reason, insureds should carefully consider how they communicate internally after a loss has occurred.

Careful consideration must also be given to the clock. Policies are rife with timelines that must be met. Most importantly, it is imperative that notice of a claim be submitted to the insurer in accordance with the timelines set forth within the policy. Additionally, if a need to institute legal action arises, policy provisions must be consulted.

Once notice has been given, the insurer likely will seek to investigate the loss. Throughout this process, the insured has a duty to cooperate. However, it is always important to remember that communication that takes place in what seems to be a cooperative environment may some day be used against the insured if litigation becomes necessary.

As with any litigation, document preparation and retention are important aspects in proving an insurance claim. Photographs, field notes, reports from third-party consultants and other documentation all may be important.

Dorsey insurance attorneys recommend that, even in circumstances in which it does not appear on the surface that there will be problems with insurance coverage, that a company consult with, not only their insurance agent or broker, but with legal counsel competent to assist, early in the process. Doing so, if nothing else, may be viewed as another form of insurance.

About the Authors

Steven K. Champlin is a Partner with the law firm of Dorsey & Whitney LLP and is also the co-chair of the Construction and Design Group. Steve's practice includes responsibility for a variety of types of commercial litigation and arbitrations, with emphasis on representation of owners, contractors, subcontractors, suppliers, and architects and engineers in construction disputes; representation of landlords and tenants in commercial lease disputes; representation of lenders and borrowers in mortgage foreclosures and work outs; representation of property owners in real estate tax appeals and condemnations; business planning aimed at avoiding litigation; and serving as a mediator or arbitrator in construction matters. He can be reached at (612) 340-2913 or champlin.steve@dorsey.com.

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