

Business Interruption Insurance Coverage Experience



K&L Gates maintains an extensive business interruption (“BI”) insurance coverage practice devoted to maximizing policyholders’ recoveries on complex and challenging claims. Our clients consist of a variety of businesses in diverse commercial enterprises, including leading financial institutions, real estate developers, manufacturers, telecommunications, professional services, and others.

BI claims, and their ensuing disputes, typically share several key characteristics. First, they are factually complex, requiring a detailed understanding of a client’s business operations and financial statements. Second, they require immediate client counseling, ensuring that recovery is not undermined by the manner in which a policyholder has documented and pursued its claim, or remediated its damage or mitigated its loss. Early counseling encourages a viable and coherent coverage theory. Third, experts may be needed to calculate and present the BI loss. Fourth, a policyholder’s recovery can be dependent on the interpretation of policy terms that have not yet received substantial judicial review; given the inherently “soft” or, in the insurer’s view, speculative nature of BI losses. K&L Gates has significant experience with each of these challenging features of BI claims and, where appropriate, can draw on its relationships with outside consultants and experts (such as forensic accountants) to meet BI claims challenges.

A list of selected K&L Gates engagements in the BI area follows:

- Represented a mining company in multi-insurer, multi-jurisdictional coverage litigation regarding a large BI and property damage claim arising out of a methane gas ignition in one of the company’s metallurgical coal mines.
- Represented one of the world’s largest gaming and entertainment companies in connection with property damage and BI losses arising from Hurricanes Katrina and Rita.
- Represented a large health care enterprise in respect of property damage and BI losses suffered by hospitals in Louisiana as a result of Hurricane Katrina.
- Represented one of the world’s largest media and entertainment companies, one of the world’s leading financial services institutions, one of the world’s leading professional services firms, one of the country’s leading luxury real estate property owners/managers, and one of the country’s leading hedge funds with respect to large BI and related claims arising out of September 11, 2001-related losses.
- Represented one of the country’s leading real estate developers in a delay-in-opening claim following a massive fire at the project site during construction.
- Represented one of the country’s leading food and produce growers/distributors with respect to a BI claim arising out of flooding from Hurricane Mitch.
- Represented a utility company with respect to a BI claim arising out of damage to equipment requiring a shutdown of business.

- Represented a foundry with respect to BI claims arising out of an explosion.
- Represented an energy company with respect to a large BI claim arising out of an electrical generator failure.

No single approach fits every BI claim, but the depth of our experience allows us to truly partner with our clients to find the best approach for their individual claims. On some claims, our clients' interests are best served by negotiating directly with BI insurers and avoiding litigation or formal dispute resolution. K&L Gates lawyers have advised clients on the strengths and weaknesses of claims, developed and implemented strategies for presenting claims, and negotiated directly with an insurer in coordination with the client's retained experts. We have obtained substantial insurance recoveries at relatively minimal cost through these efforts. K&L Gates has also represented clients in resolving loss calculation disagreements arising from an appraisal process mandated by a BI policy (although appraisals generally are applicable only to disputes over the loss amount and not where insurers deny or dispute the scope of coverage). The calculation of BI losses is often dependent on coverage issues that require assistance of counsel, and K&L Gates lawyers have assisted clients in maximizing recovery through the appraisal process.

In many K&L Gates engagements, we have assisted clients very soon after the covered peril has occurred and during remediation efforts, ensuring that all appropriate steps are taken to maximize recovery and to develop the policyholder's basic coverage approach, theory, and strategy. K&L Gates has, for example, worked with clients to ensure that they have complied with their express duties under their BI insurance policies, including their duty to provide prompt and sufficient notice to insurers and to cooperate with their insurers' investigations. K&L Gates has also worked closely with forensic accountants and other necessary experts to properly and fully document the clients' BI and extra expenses claims, and to ensure that all lost income and reimbursable expenses are included in the clients' claims. K&L Gates has also counseled clients to ensure that appropriate mitigation steps are taken without undermining the ability to recover mitigation expenses. Finally, K&L Gates has assisted clients in securing advance payments necessary to complete remediation and counseled clients regarding when to submit proof of loss forms and how to prepare such forms.