Large Exposure Property Losses
The Right Expert Will Make a Difference

Concepts and Recent Developments
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Introduction

The complexity of property insurance claims has changed dramatically in the past few decades. This change can largely be attributed to the increase and significance in exposures carriers have faced from natural and man-made disasters, as well as the increasing complexity associated with these types of claims. This gradual but certain increase in complexity has resulted in the availability and types of coverage, and has directly impacted the claim resolution process. One of the most significant changes we have witnessed is the trend by carriers to limit their risk when underwriting certain types of losses and the routine retention of teams of experts to direct the adjustment process of complex and/or catastrophic property claims.

As the saying goes, in order to understand the present, we must look to the past. In this paper, we will provide an overview and outline the significant events which have prompted changes in coverage, adjustment and claim preparation procedures, and settlement of commercial property insurance claims, with an emphasis on business interruption. By identifying the emerging trends of past decades, one can gain key insights on ways to prepare for and resolve losses going forward. A firm understanding of current issues can enable risk and financial leaders to more proactively plan their claim approach, mitigate damages and maximize coverage and ultimate recovery.

Historical Overview of Large Exposure and Complex Claims

Over the past decades, the number of natural catastrophes has risen steadily, and specifically, those stemming from meteorological, hydrological, and geophysical events. As depicted in the graphs below, the frequency and severity of losses have increased significantly, with the largest impact occurring over the past 25 years. This increase in frequency -- and the resulting insurable damages -- has been so significant that insurers began to classify named storms, floods, and other large-scale losses as catastrophic events. In turn, as these potential insurable damages increased both coverage and the insurance claims process were impacted.

The impact on the policy holder from property loss, diminution of its value, business interruption or other financial loss, can be catastrophic. The increase of insurable interests in these disasters and other large exposure losses directly precipitated changes within the market, which we discuss below. Notably, the most costly disasters in U.S. history occurred within the past two decades, and eight out of ten of these events occurred in this decade alone. This trend is expected to continue, creating even greater challenges for firms seeking to manage their risk.
In addition to these naturally caused catastrophic losses, the insurance market also faced significant exposure due to several large-scale fires, explosions, and building collapses which occurred in the 1980’s. However, it was the attacks of September 11th in 2001 and Hurricane Katrina in 2005 that substantially impacted the carriers’ claim handling processes; specifically as it relates to business interruption claims.
Given the significant exposure facing carriers, along with the increase in severity and complexity of claims, precise and detailed documentation, along with increased specialization, has become the norm. Attorneys, forensic accountants, engineers, building estimators, and many other experts are now employed by carriers at the onset of a claim to adjust and direct the claim process. With the assistance of these experts, carriers are now requesting greater and more precise documentation from the policyholder to support their claim payments. To illustrate, the *Property/Casualty Insurance Industry Income Analysis for 2011 – 2015*, shows loss adjustment expenses incurred exceeded 20% of the total claim payment\(^1\). These costs are in part due to the involvement of experts in the loss adjustment process. Further, these large and complex losses not only affected the claim process, but also precipitated changes in insurance underwriting and deductibles.

Changes and Current Trends in Insurance Coverages and Deductibles

Due to natural disasters and other large exposure property losses, insurance carriers adopted a more restrictive and prudent approach when assessing their potential risk. Carriers began to limit coverage for Named Windstorms, Earthquake, Flood and other catastrophic events by applying sublimits2 and percentage deductibles3. Policy review should address applicable sublimits and percentage deductibles, both during the marketing and broking processes, as well as when a claim occurs. Simply stated, the policyholder will retain a larger portion of the risk due to these percentage deductibles and policy sublimits.

One of the more difficult components when quantifying a loss is the period of interruption or restoration and assessing the consequential business income, which are fact-intensive. Carriers customarily employ forensic accountants to properly evaluate business interruption4 losses. Business interruption policies tend to restrict coverage to a specified timeframe which is linked to the period of interruption or restoration5. For some policies, the period of restoration is defined as the period of recovery5. It should be noted that there are subtleties of coverage directly linked to specific policy language. It is important that policyholders work closely with their broker to ensure their unique needs are addressed. Generally speaking, there must be a direct physical loss by a covered peril at the scheduled premises for coverage to be applicable. However, there are exceptions, such as service interruption, ingress/egress, order of civil authority, and damage at mutually dependent premises which is commonly referred to as contingent business income.

2 A limitation in an insurance policy on the amount of coverage available to cover a specific type of loss. A sublimit is part of, rather than in addition to, the limit that would otherwise apply to the loss. In other words, it places a maximum on the amount available to pay that type of loss, rather than providing additional coverage for that type of loss. In property insurance, however, sublimits may be stated as dollar amounts or as a percentage of the limit that would otherwise apply. For example, under a commercial property policy with a $2 million limit applicable to losses from all other causes, there may be a $100,000 sublimit on coverage for loss from flood, a $500,000 sublimit on loss from earthquake, and a debris removal sublimit of 25 percent of the direct damage loss amount. In both examples, the sublimit is the most the insured can collect for the type of loss to which the sublimit applies.

3 "Sublimits." Glossary of Insurance and Risk Management Terms. IRMI

A separate, higher deductible provision that applies to loss caused by wind or hail. Often, the deductible is expressed as a percentage of the value of the property or, in a homeowners policy, as a percentage of the dwelling’s limit, rather than as a flat dollar amount. In some Atlantic and Gulf coastal states, insurers have filed a variation of this deductible that applies an even higher percentage deductible in the event of loss from a “named storm,” such as a hurricane.

4 "Percentage deductibles “ Glossary of Insurance and Risk Management Terms. IRMI

Insurance covering loss of income suffered by a business when damage to its premises by a covered cause of loss causes a slowdown or suspension of its operations during the time required to repair or replace the damaged property.

5 "Business income Coverage.” Glossary of Insurance and Risk Management Terms. IRMI

6 Begins: (1) 72 hours after the time of direct physical loss or damage for Business Income coverage; or (2) Immediately after the time of direct physical loss or damage for Extra Expense coverage; caused by or resulting from any Covered Cause of Loss at the described premises; and b. Ends on the earlier of: (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or (2) The date when business is resumed at a new permanent location. "Period of restoration" does not include any increased period required due to the enforcement of any ordinance or law that: (1) Regulates the construction, use or repair, or requires the tearing down of any property; or (2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants". The expiration date of this policy will not cut short the "period of restoration".

The length of time for which loss may be claimed is referred to as the period of recovery and: 1) shall commence with the date of insured physical loss or damage and shall not be limited by the date of expiration of this policy; 2) shall not exceed such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair, or replace the property that has been destroyed or damaged; and, 3) such additional length of time to restore the Insured’s business or operations to the condition that would have existed had no such loss or damage occurred, commencing with the later of the following dates: a) the date on which the liability of the insurer for loss or damage would otherwise terminate; or b) the date on which repair, replacement or rebuilding of the property that has been damaged is actually completed and the Insured has resumed normal operations.

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The difficulty in assessing business income losses and hence, extent and nature of coverage, is illustrated by the different rulings made by courts. In *Fidelity-Phenix Fire Insurance Co. of New York v. Benedict Coal Corp*, the court stated: “[t]he purpose of (business interruption)... insurance is to indemnify the assured against losses arising from the interruption of business by fire or other catastrophe insured against; and lost profits and fixed charges and expenses which continue and which would have been earned if the business had gone on are the losses naturally arising from such interruption. We think it clear that such losses are to be determined in a practical way, having regard to experience of the business before the fire and its probable experience thereafter...”

However, determining a practical methodology to evaluate these losses is at the heart of the issue. The United States Court of Appeals for the Fourth Circuit held in *Prudential LMI Commercial Ins. Co. v. Colleton Enterprises* that an insured must establish four elements in a business interruption claim for lost earnings:

“In order to establish coverage for lost profits or lost earnings under business interruption coverage provisions, the insured must establish that: (1) the peril insured against occurred, (2) the peril caused damage to the business facility insured, (3) the damage resulted in a partial or complete interruption of business, and (4) the business suffered a loss of earnings or profits as a direct result of the business interruption.”

Other issues arise as well. For instance, the time period by which to calculate the loss of business interruption is determinative of the extent of the recovery, for which engineering, construction and accounting expertise is required. In fact, carriers customarily employ forensic accountants and other experts for the purpose of evaluating business interruption losses which can be affected by a number of circumstances and are often at issue. Thus, in *Rogers v. Am. Ins. Co.*, the court outlined parameters of the time period which should govern the evaluation of the claim.

“Plaintiff's recovery must be restricted to the loss of income that would have been earned during the reconstruction period, even though there may have been a substantial additional, but uninsured, loss consisting of reduction in income subsequent to the date of full restoration. It is common knowledge that business interruption for any extended period may, and often does result in a loss of customers, some for a short period, some for longer periods and some permanently. A 'cut off' date is a necessity. Otherwise, claims would be opened to a degree of speculation which would be absurd. There would be no available method to determine with any degree of accuracy the amount of such losses.”

Likewise, in *Alevy v. Alliance General Ins. Co.*, the court applied an actual measure of the restoration period, reasoning that:

“In this case, rebuilding has occurred, and the actual replacement time may be determined with some accuracy. To find that actual replacement time cannot be used to determine the "ACTUAL LOSS SUSTAINED" would be contrary to a lay person's interpretation of the policy language and would defy common sense. Thus, the appropriate methodology in this case is to begin the analysis using actual replacement time.”

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7 *FIDELITY-PHENIX FIRE INS. CO. OF NEW YORK et al. v. BENEDICT COAL CORPORATION*; No. 3383; No. 3384Circuit Court of Appeals, Fourth Circuit 64 F.2d 347; 1933 U.S. App.
9 *Rogers v. American Ins. Co.*, 338 F.2d 240, 243 (8th Cir. Iowa 1964)
However, the court also held that use of a theoretical restoration period is entirely appropriate where the insurance payment was to be made before rebuilding or presumably if rebuilding were not to occur, citing *Bard's Apparel Mfg., Inc. v. Bituminous Fire & Marine Ins. Co.*, 849 F.2d 245 (6th Cir. Tenn. 1988).

Notably, in many situations, courts are left to characterize the period of interruption as being derived from a theoretical calculation, but the actual circumstances of a loss will be considered in determining the proper length of the repair period. Theoretical calculations of the period of restoration may be lengthened by real-world events that disrupt repairs to the damaged property. Those can be actions of a third party or natural events, but adjustment decisions made by the carrier regarding property claims can also increase the insurer’s exposure for business interruption losses. For example, the fact that an insurer has not paid the insured all funds owed may constitute a basis for extending the insurer’s liability for business interruption. In *Eureka-Security Fire and Marine Ins. Co. v. Simon*, the policy holder had a claim under three separate policies with different insurers, with the same adjustor, and a dispute caused a delay in the settlement of the business interruption claim. The appellate court here held:

“The court below could well find that the delay on the part of the plaintiff in returning to business was occasioned by events without the control of the plaintiff. The court could well find that the delay in negotiating the other two losses with the adjustment company that represented the other two insurance companies, as well as defendant, was a reasonable delay to be anticipated by the defendant insurance company in writing its policy. It could also find that the delay of the landlord in repairing the building and insisting upon the rebuilding of the market first is a normal hazard or risk which an insurance company may expect in writing a policy of this kind.”

It should be noted that the courts do not always strictly adhere to the testimony of experts submitted in support of the theoretical period needed to reconstruct. Courts have acknowledged that a contractor may not be able to accomplish all repair or rebuilding work within what the insurance company retained experts consider to be the proper replacement time frame and this can extend the business interruption period. What ultimately constitutes the period of restoration, whether actual or theoretical, is a fact determination that is based on the actions of the insured, carrier, third parties and/or an Act of God/ nature. Therefore, the insured should also strongly consider employing claim advocacy experts to demonstrate the value of their claims since their testimony will be likewise admitted as evidence for the Trier of fact (judge or jury).

Although the language of the Fourth Circuit Court of Appeals in delineating the four elements required for a business interruption claim seems simple, the trigger for coverage is always predicated on the specific definitions, provisions and language of the policy involved; the specific policy should be consulted. Further, small variations in circumstances of the loss, coupled with policy language, can dictate the period of time insurers will indemnify for business interruption.

The various losses sustained at the World Trade Center on September 11 are seminal examples:

In *Zurich American Insurance Co. v. ABM Industries, Inc.* a business income loss was suffered by a janitorial firm for the World Trade Center following the September 11th attacks. The court held that the loss was covered under the insured’s business interruption coverage (subject to the $127 million blanket...
limit) rather than its contingent business interruption coverage (subject to a $10 million sub limit). The court ruled that the regular business interruption coverage in the policy applied because the phrase “insured property at the insured location” included the common areas and other tenants’ premises in the World Trade Center rather than just property owned or leased by the insured. The insured’s extensive use of the property and its role in operating the entire physical plant were sufficient to give it an insurable interest in all the property to the extent of its financial interest in providing services. The contingent business interruption coverage did not apply because the physical loss was not “property not operated by the insured.” Extra expense coverage applied to recover expenses incurred by the insured due to the need to operate at substitute locations after the loss as long as those expenses were proximately caused by damage at the insured location. Thus, the business interruption period was dependent on a period tied to the entire World Trade Center over which neither party had control.

A contrary result ensued in Duane Reade, Inc. v. St. Paul Fire & Marine Ins. Co.\textsuperscript{14}, because the plaintiff had not and did not intend to rebuild its drug store destroyed in the lower level of the World Trade Center. As such, the court employed a hypothetical approach to determining the business interruption period, stating:

“...it would be entirely unreasonable to interpret the Restoration Period to include the time it would take for Duane Reade to resume operations in a store located at its former site where that site was neither the subject of the insurance policy nor expressly provided for in the calculus set forth in the Restoration Period.”

There was a somewhat similar result in \textit{SR International Business Insurance Co., Ltd. V. World Trade Center Properties et al.}\textsuperscript{15}. The court held that the business interruption period for the World Trade Center buildings is theoretical because repairs were not yet complete. The period of restoration for which parties could recover the value of rental losses following the September 11th attack was the theoretical time reasonably needed to replace the World Trade Center complex. One purpose in using the theoretical measure was to allow a court to establish the time an insured could be compensated before completion of the rebuilding. The court decided against adopting the actual repair time as the measure of business interruption, but rather noted that if and when repairs are completed that time should become the “analytical starting point” for the adjustment of the loss.

In \textit{International Office Centers Corp. v. Providence Washington Insurance Co.}\textsuperscript{16}, the insured’s offices in the World Trade Center were destroyed. The court held that the business interruption period was defined by the time that it would take to reopen offices at the World Trade Center and not at a different location. Therefore, the period of business interruption should be based on the longer period of rebuilding the entire World Trade Center complex.

In short, there is no simple, standard and singular formula available to calculate the period of restoration and the resulting business interruption. Therefore, carriers routinely require professionals with specialized expertise to analyze the complex data calculations. Likewise, the insured should position themselves with similar expertise to effectively demonstrate their claim or as needed for legal support.

Whether the methodology employed to evaluate these losses will ultimately be accepted may well be determined by a court and will depend upon the jurisdiction where the loss occurred. For example, in Texas, the prevailing case of \textit{Finger Furniture Co. v. Commonwealth Insurance Co.}\textsuperscript{17} held that a business

\textsuperscript{15} SR International Business Insurance Co., Ltd. V. World Trade Center Properties et al., 2005 U.S. Dist (S.D.N.Y.)
\textsuperscript{17} Finger Furniture Co. v. Commonwealth Insurance Co., No 04 F.3d 312 (5th Cir. 2005)

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interruption loss was to be calculated on the basis of historical sales figures, not actual post-interruption sales. The court stated “the strongest and most reliable evidence of what a business would have done had the catastrophe not occurred was what it had been doing in the period just before the interruption”. Consequently, post-interruption sales could not be used to offset sales lost during the time the business was closed. Clearly the issues surrounding business interruption coverage are complex, but the underlying purpose of business interruption insurance is indemnification, not betterment, and with careful review by specialized forensic accountants a fair, reasonable and judicially acceptable measurement can be made.

Further, in response to the catastrophic losses of the past decades, new and innovative insurance coverages have emerged. A particularly important policy form that has arisen is that of “Contingent Business Interruption”, as referenced earlier. This is a policy form covering the loss of earnings/income in the event of damage to the property of a supplier or receiver of materials/services that prevents the insured from conducting normal business operations (the supplier/receiver cannot be owned or a subsidiary of the insured party). This policy form may be expanded to include suppliers and customers of any tier and is closely linked to the “Period of Interruption” (see prior definition) and/or the “Extended Period of Indemnity”.

Some additional trends that may affect ultimate payment include coverage for “Service Interruption (also referred to as off premise power failure)” and “Law and Ordinance Increased Cost of Construction”. The latter is a property endorsement that extends standard replacement cost valuation provisions to cover the additional cost of complying with current building and construction codes regulating the repair of damaged property. Without such coverage, those costs are generally excluded. Both of these coverages are frequently at issue and applied in catastrophic, large damage or complex property claims. Again, carriers routinely employ specialized experts, including forensic accountants, engineers, building estimators, restoration experts and others to aid in the evaluation of these damages. They require precise specific documentation in order to justify payment. One study found that “30% of all companies that experience a catastrophic loss will fail within the first 24 months and an additional 29% will fail beyond 24 months”. The proper coverage can help to lower those odds and aid in the timely restoration of damaged property thus minimizing the financial impact to a business.

Fortunately, most property policies now include coverage for claims preparation and claims presentation services. This coverage eliminates or reduces out-of-pocket costs for these services. Aon Property Risk Consultants is uniquely positioned and employs a team of expert consultants ready to assist in loss management, analyze damages to physical assets, and quantify business interruption and extra expenses. These experts help to counter material differences in coverage, scope, pricing and expectations with the insurer.

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18 Adds coverage under a business interruption policy for loss of income suffered during a specified period of time (e.g., 30, 60, 90 days) after the damaged property has been repaired. In the absence of this endorsement or option, business interruption coverage typically ends on the date the damaged property is repaired or replaced.

"Extended Period of Indemnity Endorsement or Option." Glossary of Insurance and Risk Management Terms. IRMI.

19 Coverage for loss due to lack of incoming electricity caused by damage from a covered cause (such as a fire or windstorm) to property away from the insured's premises—usually the utility generating station. Also referred to as “off-premises power coverage.” Not provided in a standard property insurance policy but available by endorsement. Utility service interruption coverage endorsements vary widely as to what utility services are included, whether both direct damage and time element loss are covered, and whether transmission lines are covered.

"Utility Service Interruption Coverage." Glossary of Insurance and Risk Management Terms. IRMI
Preparation Your Pre-loss Approach

Considering the complexities inherent in the current environment, it is essential that companies consider pre-loss steps to mitigate financial impact and implement strategies to create a smooth transition to full resumption of operations.

- **Policy holders should review property policies** in detail to understand how they may respond to any potential event. Specific attention should be given to various deductibles per peril (i.e. Windstorm vs. Earthquake), sublimits and definitions of coverage. This is especially true with the Time Element portion (Business Interruption/Extra Expense) of a property policy, which often can be misinterpreted without a full understanding of its nuances.

- **An internal response plan should be developed and implemented**, which should include a flow-chart describing the response to the event that includes both internal and external resources (for example, assigned insurance adjusters, restoration contractors, etc.). Aon’s Business Continuity Management offerings include the review, analysis and development of emergency preparedness and response plans through the use of the Continuity Blueprint methodology, the first tactical step in a business continuity plan. It should be noted that the “Period of Interruption” may only apply for a finite period of time which could result in the organization being exposed to uninsured losses.

- **A defined and centralized leadership approach should be established** – usually driven by the CFO or Risk Manager -- to seamlessly coordinate loss-site and corporate role players to ensure the plan is implemented effectively. In addition, implementing loss scenarios, whereby a hypothetical loss at a specific location(s) is thrown upon the organizations risk professionals at a moment’s notice, is an effective way to test the actual response parameters within your organization in real-time.

- **Accurate asset valuation** is an on-going process needed to effectively manage physical risks which may be impacted by a number of factors that are out of the control of its owner. Aside from a normal increase in cost over time, changes in the replacement cost of an asset can result from economic forces such as inflation and supply and demand, changes in technology, development of new and improved materials and improvements in production processes. Finally, changes in building use, updates and upgrades, and the uniqueness of the property (i.e., landmarks) also can have a major impact on values.

- **Pre-loss mitigation plans should identify and coordinate external professional resources**, including an emergency restoration company capable of responding within hours of a loss at all loss sites. A thorough due diligence process must be performed when evaluating a restoration partner, including measuring capacity, such as equipment, labor, office locations and priority for equipment. In addition, a restoration company may have pre-negotiated pricing with your insurance carrier, which typically helps expedite the claim process post-loss. Many Gulf Coast organizations were unable to stem their losses following Hurricane Katrina due to absence of a pre-loss arrangement with such qualified restoration professionals. Commercial organizations which had prior agreements with reputable restoration contractors in place were first in line for assistance and, consequently, among the first to re-establish operations and limit their business-interruption losses.

Aon Property Risk Consulting can assist with pre-loss planning to help clients realize the ultimate goal of maximizing coverage, and minimizing the financial and operational effects of a major property and/or business interruption loss.
Defining Your Post-loss Approach

Insomuch as complex large exposure losses will undoubtedly be evaluated for insurance purposes, it is essential to quickly establish a system to capture all loss-related costs that will form the basis of the claim. The best approach is to utilize separate, but coordinated teams to manage the policy holders’ business continuity plan and the claim mitigation and restoration process to limit client damages and resume business operations.

Rather than relying on limited internal resources during a crisis, many organizations opt to have a claim consultant on “retainer”. Aon Global Rapid Response aids companies in their mitigation efforts by deploying experts directly to the effected location (usually within two business days), offering clear and concise loss mitigation guidance. This team of professionals includes loss mitigation consultants, remediation experts, risk engineers, forensic accountants, and construction estimators, strategically located in all regions of the world.

Most in-house risk teams do not have the resources or specialization to precisely capture data, review coverage/damage analysis, and mitigate damages on a regularized basis. They may not be in a position to properly identify the scale of damage nor develop an initial plan to get the business back up and running. It may even be simple, yet practical measures — such as photographs or video — that make the difference; capturing the right information immediately after sustaining a loss event is critical. Likewise, limiting further or collateral damage after the event is also crucial to business operations and claim success. Damage mitigation benefits the client and the partner insurance company. The insured’s response in mitigating damages may also influence a carrier’s desire to underwrite future policy periods.

The final claim presentation is a combination of hard work, strategy and negotiation, with the foundation being a dedicated, proactive and vigilant approach to property loss risk mitigation. There are often differences of opinion between the carrier and the policyholder regarding coverages and damages. Aon Property Risk Consultants can facilitate the adjustment process and ensure that the policyholder receive every benefit afforded by the insurance policy. Our Complex Claims Consulting services can be found at http://www.aon.com/risk-services/claims-consulting.jsp

Conclusion

Understanding the current business environment — and the trends and issues that drive that environment — is key to the successful navigation of the property insurance claim field. Aon Risk Property Consultants can assist with preparing a business continuity plan through pre-loss valuation for assets and business interruption exposures, claim preparation and advocacy, accounting — including business income, and building valuation. In the event of a loss, our Rapid Response team can provide initial assessment of the loss, and advise and prepare the policyholder for the insurance process — often before the insurance team arrive at the loss site.

Aon Risk Property Consultants bring a unique understanding of the issues and trends that are driving the market and influencing the property claim field. We take a proactive approach in the preparation and presentation of complex property damage and business interruption claims in order to maximize coverage and expedite claims payments. Aon Risk Property Consultants is dedicated to finding solutions that effectively manage risk in an ever-changing and complex market.
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About Aon

Aon plc (NYSE:AON) is a leading global provider of risk management, insurance brokerage and reinsurance brokerage, and human resources solutions and outsourcing services. Through its more than 72,000 colleagues worldwide, Aon unites to empower results for clients in over 120 countries via innovative risk and people solutions. For further information on our capabilities and to learn how we empower results for clients, please visit: http://aon.mediaroom.com/