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## Can Business Interruption Insurance Help Nonprofits Who Closed During ICE Raids? With Cody Wiswasser – Transcript

Jess Birken 00:00:02 Welcome to Charity therapy, the podcast where we explore the ups and downs of the nonprofit sector and answer your burning questions. I'm your host, Jess Birken, owner of Birken Law Office, and I'm excited you're here. Imagine hanging out with me and my super smart, funny, nonprofit expert pals. You get to ask them anything about your nitty gritty nonprofit life and get their wisdom for free. Whether you're a seasoned pro or just strapping on your nonprofit boots, we're here to share stories and remind you you're not alone on this journey. So get ready to join the conversation and bring me the tough questions I ain't scared. Ready to rock? Let's dive in. Hello and welcome to this episode of Charity therapy. Today I have my friend Cody Wiswasser here with me, and Cody says that Minnesota is not part of the Midwest. So we're about to fight virtually. And you're here to witness the Indiana versus Minnesota throwdown this brilliant.

Cody Wiswasser 00:01:09 Defend yourself.

Jess Birken 00:01:10 Defend yourself Cody.

Cody Wiswasser 00:01:12 And make the argument.

Jess Birken 00:01:13 Minnesota is not part of the Midwest.

Jess Birken 00:01:16 Go.

Cody Wiswasser 00:01:17 No. Don't be part of the Midwest. You're part of the Upper Midwest.

Jess Birken 00:01:21 Okay, so it's not you that says.

Cody Wiswasser 00:01:23 No, it's not the Midwest. You know, what is this? 50% of Americans think that you're not part of the Midwest. Stop. Yeah.

Jess Birken 00:01:32 This is from. This is from the Nate Silver article you were telling me about.

Cody Wiswasser 00:01:36 Yeah. It's like an old FiveThirtyEight article from 2014. It lives free in my head because. So.

Jess Birken 00:01:44 According to Nate Silver, 50% of people surveyed at one point said that Minnesota is not part of the Midwest.

Cody Wiswasser 00:01:52 Yeah, there's like a survey monkey. What's crazier is the number of people that say Kentucky is part of the Midwest. Stop.

Jess Birken 00:02:00 No, it is not. I don't even think people in Kentucky would agree with that.

Cody Wiswasser 00:02:05 And 10% of Americans think Wyoming as part of the Midwest. Shut up. Those people need to be checked.

Jess Birken 00:02:11 100% of the people answering this survey did not pass sixth grade geography. That's what I know.

Jess Birken 00:02:18 Come on. Wyoming. Wyoming is is pissed. If you're saying they're part of the Midwest, they are. They are steamboat the Western. They get the hats and the horses and the mountains. We don't have those things in the Midwest.

Cody Wiswasser 00:02:35 And Montana and Colorado. 10% also say that's part of the Midwest.

Jess Birken 00:02:40 Stop.

Cody Wiswasser 00:02:42 I wish I could make this up.

Jess Birken 00:02:44 What is wrong with the people? And this. Okay. This calls into question every poll ever. Because who are they asking? And how can we trust literally an opinion that any of these people have when they can't even identify which states are part of the Midwest like, can be embraced. I'm now I'm just like Nate Silver's data is is potentially critically flawed.

Cody Wiswasser 00:03:14 I mean, he just put it up on SurveyMonkey and said, people answer me. Oh, it's I'm not gonna I'm not gonna malign Nate Silver on this one. It's just funny. It's right up there. If you read xkcd comics.

Jess Birken 00:03:27 Yeah.

Cody Wiswasser 00:03:28 Everyone has to have an xkcd comic that lives right free in their head.

Cody Wiswasser 00:03:30 What's yours?

Jess Birken 00:03:32 I don't know. I'm so I'm. I'm so upset about Minnesota that Wyoming.

Cody Wiswasser 00:03:40 Wyoming.

Jess Birken 00:03:41 I just I'm not even sure we can record this episode anymore. Cody, I just I don't even know. I don't even know what to do with myself now. Kentucky. Okay, now I'm going to reveal my own idiocy. But, like, doesn't Kentucky touch Appalachia? Like, isn't part of. Like, aren't they closer to the Appalachian Mountains than. I mean, like anything else?

Cody Wiswasser 00:04:01 Kentucky is but 10% of people also say West Virginia is part of the Midwest.

Jess Birken 00:04:05 So stop. Okay.

Cody Wiswasser 00:04:07 There's this is what you get for inviting me on this show, Jess.

Jess Birken 00:04:11 Anyway, folks, we're here with Cody. I failed to say who the hell Cody is. Cody is an insurance professional who brings controversy everywhere he goes. No. Is an insurance professional with Community Partners insurance group and he helps non-profits, which is why he's here. Not not to undo my faith in humanity. When it comes to sixth grade geography.

Cody Wiswasser 00:04:39 I provide a lot of services.

Jess Birken 00:04:43 Oh my gosh. Okay, so we're supposed to be like actually talking about something relevant to non-profits. So let's let me try and steer us back towards that. And so I brought I brought you here because they're, you know, insurance nonprofits. There's a lot going on right now, and there's there's so many kinds of insurance and people. I feel now that we know their sixth grade geographies out the window. And also I feel that a lot of people don't really know, like what all the different types of insurance are or what they need. And today I wanted to talk with you about business interruption insurance. And could you before we like dig into that, could you just sort of like high level explain what is business interruption insurance?

Cody Wiswasser 00:05:33 Yeah, comes in two parts. Two kinds. One is true business interruption coverage, which is something happens to you that's covered under your insurance, for example, a fire and you can't open your business because of it. And so you can present a second claim, a business interruption claim for whatever money in revenue you would have brought in for the days you're closed.

Cody Wiswasser 00:05:55 The other kind is there's some stuff that's standalone business interruption coverage. So something closes your business, but it's not a covered loss otherwise. So it's not a fire. It's not floods. This.

Jess Birken 00:06:09 When you say standalone, do you mean like you would have to specifically say, and I want coverage for this and I'm going to pay it for that.

Cody Wiswasser 00:06:17 So part A is you would have to say it. And it also is called standalone because it's not tied to the rest of your policy. It's kind of its own thing. A specific kind is like state regulation. So if your business gets shut down because you're in violation of state or city code, they're not going to pay for building damages because there aren't building damages. They're not going to pay liability because no one's hurt, but they will pay business interruption coverage because the place got shut down for whatever regulatory event.

Jess Birken 00:06:46 Okay. So and that's like a specific level of coverage that you could like purchase that wouldn't be like your sort of standard. You know, we're all Earth, wind and fire.

Jess Birken 00:06:57 Cue the music type of coverage where the standard clauses, that's like you can pick out these little specific coverages if they you feel they would apply to you.

Cody Wiswasser 00:07:08 I'm wildly unsure what that Earth, wind and fire reference was, but yes.

Jess Birken 00:07:14 It's a band I'm dating myself. Seeing all the Twin Timbers is Jess. Yeah, but it's like, that's the insurance claims. Like flood fire.

Cody Wiswasser 00:07:25 You're so smart. Why are you so smart?

Jess Birken 00:07:28 Earth, wind and fire.

Cody Wiswasser 00:07:30 I'm. I'm gonna.

Jess Birken 00:07:32 You didn't know what you were signing up.

Cody Wiswasser 00:07:35 For.

Jess Birken 00:07:35 When my internet is working properly.

Cody Wiswasser 00:07:37 Okay, so, hey, I'm stealing that from you. Be. I was clapping again. Podcasting. Very visual medium.

Jess Birken 00:07:46 Okay, so now that we know, we kind of know what that is instead of sort of the typical listener question, I as a listener of my own podcast, I had a question and I wanted you to come on because of course, I'm sitting in the Twin Cities in Minneapolis, Minnesota, where over the past, you know, today is March 9th.

Jess Birken 00:08:07 Well, over the past, like two months, there's been a lot of businesses and nonprofits who've had their business interrupted by everything that's been happening here, right? So we've had like lots of ice enforcement, lots of like,

businesses have been closed, out of, you know, fear of raids and things like that. But then also like previous to that, the federal government has like withdrawn lots of grant funding and made certain programs like ineligible. And so there are all these nonprofits whose operations have been deeply affected by either government policy or government actions. Not Earth, wind and fire. They're not listening to 70s music and having a bad time. And I just was like, well, is this something I should be advising my clients that they should consider getting business interruption insurance and I really didn't understand. Can non-profits get this? For what? Why? When is it financially like worth buying? Would any of the things that have been happening here even make you eligible for a claim? Like when does that kick in? And just because this there's so many things that have been interrupted, I was like, well, it's I'm gonna ask my own listener question from Cody.

Cody Wiswasser 00:09:33 It's a good question.

Jess Birken 00:09:34 So yeah. So that I just like, dumped all of that on you. Is this the kind of thing that non-profits should be considering in light of all of the uncertainty in the environment? What do you think?

Cody Wiswasser 00:09:46 So there's like three parts to that. I think there are three parts. The first is business interruption coverage. Nonprofits can get it. They have to be providing a service for pay. So if you have like a cycle nonprofit where you repair bicycles and you charge someone for it in order to donate bikes. Then you can have business interruption coverage. Because there is business, there is revenue coming in for services going out. So the question.

Jess Birken 00:10:11 So is that a precursor to even thinking about this, that you need to have some sort of fee for service. Right.

Cody Wiswasser 00:10:19 For the most part. Or you have to have a fee for service arrangement in your contract. So I'm thinking about if you have a government entity that

says, hey, you provide services on behalf of the city government and we pay you per day or per person, then you can do it where it may not be fee for service for the client, but it is fee for service in the contract.

Jess Birken 00:10:42 That's like a voucher from the county or.

Cody Wiswasser 00:10:44 Precisely something where you closing down operations changes your revenue structure. So that's the first one.

Jess Birken 00:10:51 Yeah. So let's let's take a couple. A couple things I can think of off the top of my head. Let's say we have a nonprofit daycare that is a Spanish speaking daycare. Most of the kids are Spanish. Speaking of of Latin descent in some way. And now we've had weeks and weeks where staff are calling in. They're not coming to work and the kids are not coming into the daycare. And so our fee for service revenue is being interrupted. Is that a nonprofit that could make a should they get the insurance be? Would that even be a claim.

Cody Wiswasser 00:11:27 Or a daycare? They would want the coverage if they would be able to make a claim of it. It's going to be super carrier dependent. So it's going to depend on your actual insurance policy. For the most part, no, for the most part, for two reasons. One is there's what's called an interruption window.

Cody Wiswasser 00:11:44 So to have business interruption coverage instead of a deductible, you have how long your window is, which is how long do I have to be interrupted before I start getting paid? The standard is 72 hours, so you have to have 72 hours of being shut down before it kicks in, and it's usually a full shutdown. You can get what's called partial business interruption coverage where you're bringing in less money than you would expect. But that's that's very difficult to get. It only applies to certain places and very carrier dependent. I've only gotten quotes for that a couple of times in my career, so you'll have that. And so you'll have a 72 hour reporting window, which means are you closed for 7 to 2 hours continuously, even on the low end? It's 24 hours.

Jess Birken 00:12:29 So let's take the daycare example and let's I mean, this is something that, you know, theoretically is going on for like six weeks, right? So 72 hours, no big deal. Yes. Let's just say that they're definitely not having any no staff, no participants.

Cody Wiswasser 00:12:44 You have a secondary question, which is is it a covered loss which is going to be and this is where it gets really into the contract. The closest thing you would probably get is what's called a regulatory action, which is coming back to the earlier one. You get shut down for some reason that the government's doing something. This usually isn't covered. It's not covered for most things outside of business interruption coverage. This can go anything from. My favorite business interruption claim was the fire department of this. One city was doing an elongated fire test, so they were burning down a building, but they were burning down a bunch of buildings on a block. And so they shut the whole block down for like a week while they burned all these buildings down. And so that's like a regulatory action. Can you make an argument that Ice enforcement prevents entrance to the building and prevents the doing of day to day business, potentially. And it's really going to depend on that insurance contract?

Jess Birken 00:13:38 Well, and I'm curious, would it depend on how the documentation is prepared? Because if the board of directors says, like our staff are in, there is an imminent risk of physical harm to our participants and or our staff by simply like coming here.

Jess Birken 00:13:59 And so to mitigate like our risk of that harm. It's in the best interest of the non-profit. Yada yada. Like we're making a decision to close versus just nobody's showing up, right? Like does that. Does the facts of the scenario matter?

Cody Wiswasser 00:14:18 They can, but not so much from how the board formats things, but according to mission. So if, for example, you have someone whose mission is specifically, hey, we work with like undocumented youths, that is who we work with. You have a stronger argument. I don't know if it'd be a good one, but you have a

stronger one to make a claim under regulatory action because you're being targeted specifically and saying like, hey, no, there is a raid. Now, you do have a question. Business interruption coverage where let's say there is a raid here in Chicago. We had a South Shore building and a military style, like kicking in of windows and things. God forbid that happens again. It's horrific enough that it happened once.

Cody Wiswasser 00:15:02 One could imagine the windows have been kicked in, the doors been knocked down. It's going to take a week to do repairs from this action. You might have a business interruption claim in a clearer argument for a regulatory action, but doing so prophylactically, like closing down in anticipation of a regulatory action, usually won't be covered, mostly because the carrier's pushback is going to be, well, why wouldn't you just close and say it's in anticipation of a regulatory action? Right? Why wouldn't you just bilk us for money?

Jess Birken 00:15:32 Yeah, because that's my thing is like, well, the insurance companies don't really want to, like, pay out on claims like that's. Otherwise they would be insolvent and nobody's claims could get paid. So it's just like an interesting thing to think about because it's just something that occurs to me. As for certain missions and certain nonprofits, as you probably know, working with a lot of nonprofits in the insurance realm, it often is an afterthought or sort of like, oh, well, surely we don't need that because we're just a good charity doing good things.

Jess Birken 00:16:08 And so it's good for people to understand whether this is worth doing, whether this is something they should consider and that you might have to get a standalone coverage. And just a blanket business interruption policy is maybe not the most helpful.

Cody Wiswasser 00:16:28 Yeah it is. I always tell every nonprofit I work with, always talk to your broker and always do a risk profile, sit down and really say what scares you. The perfect insurance is what really scares you is not what scares a carrier. And what a carrier is really scared of is not what you're scared of. And you, you you trade, you say, yeah, that doesn't scare me. Carrier all. I'll eat that risk carrier. You take this risk though,

because it keeps me up at night. And then you can focus on your mission, not on being up at night.

Jess Birken 00:16:57 Yeah. And this is why I love having you here. Because I feel like there are a lot of no shade to the brokers of the world, but, like, there are a lot of insurance agents out there who are just like, oh, nonprofit.

Jess Birken 00:17:10 Okay, here's three quotes for no in general liability. And just pick the cheapest one. And they don't have a conversation. They don't do the risk assessment, and they don't really ask a lot of questions. And nonprofits are, by and large, just going to take the cheapest price without really investigating what the coverage really is, why it would matter. And those sorts of things can really bite you in the butt later.

Cody Wiswasser 00:17:37 And never what you want them to. It is always something terrible has happened. And then a second terrible thing happens, which is you find out that you're shit out of luck on coverage.

Jess Birken 00:17:45 Okay, so I think I have a few key takeaways here, and I feel like the first one is business interruption insurance may be good for you or it may not be, it's really going to depend on facts and circumstances and exactly what your mission is and exactly what you're doing and what sort of scenarios are realistic for you, then I think the second one obviously then is to, you know, get out ahead of this by finding a broker that will sit down and talk with you about your mission, about your activities, about what keeps you up at night and really have a good conversation with someone to make sure that you have the coverage you need and that you're not paying for coverages that are really aren't going to help you.

Jess Birken 00:18:33 And then I think the last one for me anyway, is that it really is important to understand the fine print in your policy, like what is covered and what is not covered before you get your eyes on filing a claim. And we didn't talk about this, but

I have to imagine that claims filed is some sort of like metric that gets used in determining your price. And so, you know, really being mindful of like, do I really think that I have a claim and making sure that you understand your coverage before you submit one feels imperative when it's a little bit, maybe on the fence to me. Am I missing anything? Is there anything you would add?

Cody Wiswasser 00:19:18 No, I just want a foot stomp. The last one. You should have a good broker that tells you when filing a claim would be the deleterious. There's the word to your future. I used it, it got there.

Jess Birken 00:19:30 Oh, you know why? Because you got that good Midwestern education as Indiana never being questioned as being part of the Midwest.

Jess Birken 00:19:40 Cody.

Multiple Speakers 00:19:42 Set by you. I really want a defense.

Cody Wiswasser 00:19:45 Of you saying Indiana is not in the Midwest.

Multiple Speakers 00:19:48 I.

Jess Birken 00:19:49 I firmly believe that Indiana is part of the Midwest. Absolutely, absolutely.

Cody Wiswasser 00:19:55 Lester.

Jess Birken 00:19:55 We're gonna dump anybody off the Midwest list. It probably should be Ohio. Just kidding. Just kidding. Ohio. Sorry, Cody. Thank you so much for being here. If folks want to find you, where can they reach out?

Cody Wiswasser 00:20:07 Yeah, probably best place is our website at Community Partners in S. Com or my email, which is Cody. S a s s e r at insurance com.

Jess Birken 00:20:22 Amazing. We'll put that in the show notes. And folks, if you have thoughts about whether Minnesota is part of the Midwest, please do email me. Unless you think that we're not part of the Midwest, then just keep your thoughts to yourself. Thank you. If you know someone who should be thinking about business interruption insurance, share this episode with them. Rate reviews. Subscribe in your podcast app.

Jess Birken 00:20:45 It really does help people find the show. And if you have a question or a story to share, I would love to hear from you. So send me a note online at Charity therapy. And as always, thanks for listening.

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## About the Author



**Hi, I'm Meghan Heitkamp.**

I'm the owner of Birken Law Office, I help nonprofits solve problems so they can quit worrying and get back to what matters most – The Mission. I'm not like most attorneys, I actually have an outgoing personality, and – like you – I like to think outside the box. Most of my clients are passionate and have an entrepreneurial spirit. I'm like that too. My goal is to help you crush it. Getting bogged down in the minutia sucks the joy out of the important stuff. My clients want to do the work – not the paperwork.

**Let's connect!**

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