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Brief

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Matt Weaver^{a1} Margaret Hupp Fahey^{a2} Camilla Cohen^{a3}

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SEPTEMBER 11, 2001, AND THE IMPACT OF ACTIONS BY CIVIL AUTHORITIES**Lessons Learned**

***21** Business interruption coverage is designed to compensate policyholders for lost business income and expenses as a result of physical damage to their premises, industry, or other commercial establishment. Traditional business interruption coverage is triggered when four elements are met: (1) a direct physical loss of or damage to property (2) caused by a covered peril (3) that results in a suspension of business operations (4) that causes a loss of business income.

Unlike traditional business interruption coverage, civil authority coverage compensates the policyholder for loss of business income that results when a civil authority interrupts the insured's business as a direct result of physical damage to a *third party's property* (or in some instances to the insured's property), preventing access to the insured's property.¹ Closely resembling, but distinct from, civil authority coverage is “ingress/egress” coverage. This type of coverage is triggered when physical loss of or damage to third-party property prevents or impairs ingress to or egress from an insured's property.²

While these types of insurance are “secondary” or “consequential” in that they are triggered by perils that affect business property but only provide coverage for the losses stemming from these perils and not the damage to the property itself, each subset requires different elements of proof to trigger coverage.³

This article focuses exclusively on civil authority coverage. The analysis of whether civil authority coverage was available was once straightforward; however, the 9/11 terrorist attacks precipitated a series of cases that raised new issues unique to modern life. Increased globalization and the far-reaching effects of 9/11 broadened the judicial focus beyond what was once a local problem. In addition, catastrophic storms since 9/11 found civil authorities acting in anticipation of potential damage to their areas as opposed to responding to damage that had already occurred. The case law from this period reflects these concerns.

The Evolution of Civil Authority Coverage: 1960-2001

Litigation surrounding civil authority coverage began in earnest in the late 1960s as businesses were interrupted from curfews imposed as a result of civil rights riots.⁴ Typical policy language during this period provided coverage when a civil authority order was issued as a result of physical damage to the insured's property or to property adjacent to the insured causing an interruption of the insured's business. Courts interpreted this language restrictively, refusing to find coverage not only where the civil authority order did not arise from physical damage to covered property, but also when the policy was silent on physical injury trigger. This restrictive--but consistent--framework allowed policyholders and carriers to predictably determine whether and in what circumstances civil authority coverage applied.

The destruction of 9/11, however, led to a series of cases with more nuanced holdings--almost all of which refused to find coverage for the policyholder. These decisions evidenced the courts' reluctance to liberally construe policy language in favor of the insured in light of the assumed ramifications. In nearly every instance, cases from the late twentieth century dealt with business losses that were local in nature, and judicial attitudes toward recovery for the policyholder reflected this reality.

Increased globalization in the twenty-first century broadened the effect of civil authority orders on businesses' lost profits. These far-reaching consequences affected policyholders' bottom line in ways not seen before. The 9/11 attacks brought these new issues to the fore.

The 9/11 attacks directly affected the World Trade Center in lower Manhattan, the Pentagon in Washington, D.C., and all commercial flights scheduled for travel that day.⁵ Immediately following the attacks, all of lower Manhattan was evacuated, along with various government agencies in Washington, D.C. Lost profits resulting from the attacks led thousands of businesses to file claims with their carriers seeking civil authority coverage. These claims were not limited to businesses with insured property in New York or Washington, D.C. Instead, businesses throughout the country, feeling the ripple effects of the attacks, looked to their carriers with increasing frequency.

In *730 Bienville Partners, Ltd. v. Assurance Co. of America*, the policyholder operated a hotel in New Orleans that suffered lost profits after a significant number of its guests cancelled reservations due to the Federal Aviation Administration's (FAA's) order grounding all air traffic in the wake of the attacks.⁶ The relevant civil authority coverage provided in part:

We will pay for the actual loss of “business income” you sustained and necessary “extra expense” caused by action of civil authority that prohibits access to your premises due to direct physical loss of or damage to property, other than that at the “covered premises” caused by or resulting from any Covered Cause of Loss. This coverage will apply for a period of up to 4 consecutive weeks from the date of that action.⁷

In refusing to find coverage, the court focused on the policy language, which required the civil authority order to “prohibit” access to the insured premises. Because the FAA's order did not “prohibit” customers from accessing the hotel, coverage was not triggered.⁸

***22** *730 Bienville Partners* is representative of cases involving businesses located outside of the geographical reach of the relevant civil authority orders issued as a result of the 9/11 attacks.⁹ These cases stand for the proposition that coverage will not be available under policies with similar language where the civil authority order has only the indirect effect of restricting or hampering access to the insured's business.¹⁰

Whether a covered peril caused the civil authority order was also hotly contested. In *United Airlines, Inc. v. Insurance Co. of State of Pennsylvania*, the Second Circuit considered whether United Airlines could obtain civil authority coverage for lost profits arising from the FAA's civil authority order prohibiting flight traffic.¹¹ The policy at issue covered “a situation when access to the Insured Locations is prohibited by order of civil authority as a direct result of damage to adjacent premises.”¹² While the FAA's order prohibited access to United Airlines flights, the order was not the direct result of damage to “adjacent premises” (the Pentagon). Instead, the court reasoned that the FAA's order was the result of the future threat of terrorist attacks and refused to find coverage where there was no nexus between the civil authority order and a covered loss under the policy.

There are very few reported decisions that have found coverage in favor of the policyholder. While ultimately reversed on other grounds, the unpublished decision in *U.S. Airways, Inc. v. Commonwealth Insurance Co.*¹³ is one of the most favorable policyholder cases often cited by insureds. U.S. Airways sought coverage from its insurer for business interruption caused by the “nationwide ground stop orders issued by the Federal Aviation Administration and the closure of Reagan National Airport in the wake of the terrorist attacks on September 11, 2001.”¹⁴ The policy language at issue provided coverage for “loss sustained during the period of time, not to exceed 30 consecutive days when, as a direct result of a peril insured against, access to real or personal property is prohibited by order of civil or military authority.”¹⁵ The insurer argued against coverage on the grounds that the FAA's order was not issued as a direct result of a peril insured against. Conversely, the insured argued that the order

was entered as a direct result of the fear that a flight was heading to the airport; therefore, the order was in fact precipitated by a future threat to the airport and the policy language did not require actual physical damage to the insured property. The court agreed with the insured and entered summary judgment on this issue in its favor. This case is distinguishable from the host of cases cited above because the policy only required that the order of civil authority be issued as a direct result of a peril insured against, not as the result of direct physical loss or damage. However, insurers continued to issue coverage with language similar to that found in *U.S. Airways*,¹⁶ and the policyholder and the carrier should examine the language of the civil authority provision to determine if direct physical loss or damage is required before the insured is entitled to coverage.

Civil Authority Coverage after September 11

It has been said that civil authority coverage became more restrictive after 9/11, and that natural catastrophes such as Hurricane Katrina contributed to further tightening of the coverage.¹⁷ Many cases addressing civil authority coverage after 9/11 involved a major weather event, such as Hurricanes Katrina and Gustav and Superstorm Sandy, and because of the broad sweep and catastrophic results of these storms, civil authorities often took action in anticipation of potential destruction to property.

Perhaps in response, civil authority provisions now frequently include language requiring a waiting period before coverage is available, a limit on the period of time the coverage will run, and geographical limits to direct physical loss that will trigger the coverage. These evolving provisions veer away from standard language drafted by the Insurance Services Office (ISO),¹⁸ which typically reads:

We will pay for the actual loss of Business Income you sustain ... caused by action of civil authority that prohibits access *23 to the described premises due to direct physical loss [of] or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss.¹⁹

When combined with the requirement of a direct, causal nexus between the physical loss of or damage to property and the civil authority action, establishing coverage under the civil authority provision has become increasingly difficult.

Geographical limitations and required nexus between property damage and civil authority action. The ISO provision quoted above does not geographically limit where the direct physical loss of or damage to the property needs to occur. However, case law demonstrates that policies are increasingly including a geographical boundary limiting where damage must take place in order for coverage to be triggered, whether adjacent to the described premises or within 100 miles.²⁰ Those limitations may have been a reaction to arguments made by insureds that physical loss of or damage to property in locations distant from the described premises is sufficient to meet the requirement of a direct, causal nexus between the property damage and the action of the civil authority.²¹

In one such case interpreting the ISO language without geographical limitations, *South Texas Medical Clinics, P.A. v. CNA Financial Corp.*, a judge in Wharton County, Texas, ordered an evacuation of that county two days after Hurricane Rita hit the Florida Keys and offshore rigs in the Gulf of Mexico.²² Hurricane Rita ended up taking a different path than projected, and Wharton County suffered no storm damage.²³ However, the insured owned multiple medical clinics that closed in response to the evacuation order and sought coverage under the civil authority provision of its policy.²⁴ The coverage dispute focused on whether the civil authority order prohibited access to the described premises *due to* direct physical loss of or damage to property, other than at the described premises, caused by or resulting from a covered cause of loss.

The insured argued that the “due to” causation requirement was met because the judge cited to the property damage in Florida as one of the reasons for the mandatory evacuation. In response, the insurer asserted that a more direct causal link was required

between the damage to other property and the civil authority order, asserting that the order was a precautionary measure taken because of *anticipated* damage to property in Wharton County, not “due to” the damage in Florida.²⁵

The Texas court found in favor of the insurer and cited, in part, to the deposition testimony of the judge who issued the evacuation order: “The only significance of the prior damage to property outside Wharton County was as an indication of the harm that could result if Hurricane Rita made landfall near Wharton County.”²⁶ The court held that the mandatory evacuation order was not issued due to physical loss of or damage to the property in Florida and the Gulf of Mexico but due to the anticipated threat of damage to the county.²⁷ A mandatory evacuation order issued due to anticipated damage was not enough to trigger coverage under the civil authority provision.²⁸

Similarly, the insured in *Dickie Brennan & Co. v. Lexington Insurance Co.* made a claim under the civil authority coverage based on Mayor Ray Nagin's August 30, 2008, order requiring mandatory evacuation of the west and east banks of New Orleans on August 31, as Hurricane Gustav approached.²⁹ The order was premised on “anticipated high lake and marsh tides due to the tidal surge, combined with the possibility of intense thunderstorms, hurricane force winds, and widespread severe flooding.”³⁰ At that point in time, Hurricane Gustav had caused damage in the Caribbean. When Hurricane Gustav did hit New Orleans, the city suffered only minor damage, and neither the Brennan restaurant properties nor its neighbors' properties were damaged.³¹

The insurer denied the claim because there was no nexus between the evacuation order and damage to property, other than at the described premises. The federal district court agreed and dismissed the lawsuit.³² On appeal, the Fifth Circuit set forth a four-part framework to analyze civil authority coverage. To establish a covered loss, the insured must show:

1. [the loss of business income must be] caused by an action of civil authority;
2. the action of civil authority must prohibit access to the described premises of the insured;
3. the action of civil authority prohibiting access to the described premises must be *24 caused by direct physical loss of or damage to property other than at the described premises; and
4. the loss [of] or damage to property other than the described premises must be caused by or result from a covered cause of loss as set forth in the policy.³³

The case turned on whether the third element was met. The insured argued that it was because the civil authority action was in response to property damage in the Caribbean and Gustav's projected path. The insured specifically noted the absence of policy language setting a geographical limit to the location of the property damage. In response, the insurer asserted that there was no causal connection between the prior damage and Mayor Nagin's order, and that the damage must be near the insured premises to satisfy the required causal nexus.³⁴

The appellate court observed that the evacuation order did not mention the earlier property damage in the Caribbean but instead listed the possible future storm surge, high winds, and flooding from Gustav's predicted path as reasons for the evacuation: “The general rule is that ‘[c]ivil authority coverage is intended to apply to situations where access to an insured's property

is prevented or prohibited by an order of civil authority issued as a direct result of physical damage to other premises in the proximity of the insured's property.”³⁵ In the absence of anything in the mayor's order that showed it was issued “due to” physical damage in the Caribbean or in Louisiana, the court held that the insured failed to establish a nexus between any prior property damage and the evacuation.³⁶

Geographical and time limitations can combine to further limit coverage. The interplay between the geographical and time limits of civil authority policy language can result in situations where coverage may be triggered by property damage within the required geographical range, but a waiting period or restriction on the period of recovery may curtail the coverage further.

In *Kushner Lagraize, LLC v. Phoenix Insurance Co.*, application of the geographical limitation in the civil authority provision came into play.³⁷ The insured firm sought coverage for business income and extra expense loss arising out of Hurricane Gustav and was paid for two days (September 2-3, 2008) of business interruption under the civil authority coverage. The insured sought additional coverage for September 1, 4, and 5.³⁸

Jefferson Parish issued its evacuation order on August 31, 2008, damage occurred as of landfall on September 1, and an evacuation order remained in effect until September 3.³⁹ The court observed that the civil authority coverage had two conditions:

First, “[t]he civil authority action must be due to direct physical loss of or damage to property at locations, other than described premises, that are within 100 miles of the described premises, caused by or resulting from a Covered Cause of Loss.” Second, such coverage only begins “24 hours after the time of that [civil authority] action and will apply for a period of three consecutive weeks after coverage begins.”⁴⁰

Because the damage within 100 miles did not occur until September 1, and the coverage only began 24 hours thereafter, the court found that there was no coverage for any business income or extra expense loss on September 1.⁴¹

Though the evacuation order was lifted as of September 3, the insured argued that the coverage should last for three weeks after the evacuation order because of language in the policy that stated that the civil authority coverage “will apply for a period of three consecutive weeks after coverage begins.”⁴² The court found it “illogical” to conclude that a short civil authority intervention of three days could result in three weeks of “guaranteed insurance payments.”⁴³ Instead, the court interpreted the three-week period as an outside limit on the civil authority coverage, which had not been reached because the evacuation order was lifted weeks before.

A provision with both geographical and time limitations can fail to respond even where access is prohibited. In *Jones, Walker, Waechter, Poitevent, Carrere & Denegre, LLP v. Chubb Corp.*,⁴⁴ the civil authority provision required access to be “*25 prohibited as a direct result of physical loss of or damage to property away from the dependent premises or within one mile from such premises.”⁴⁵ When the insured sought coverage for business income loss due to its employees being prohibited from accessing its New Orleans office from August 31 to September 4, 2008, the insurer denied coverage, arguing that the coverage was not triggered because Mayor Nagin's mandatory evacuation order of August 31 was in *anticipation of possible* harm and not from damage to property within one mile of the insured's New Orleans office.⁴⁶

On cross-motions for summary judgment, the court agreed with the insurer and found that there was no coverage from impairment of operations unless the civil authority order met the policy requirement of a nexus between the order and certain physical damage.⁴⁷ “The direct nexus between the damage sustained and the order that the policy requires suggests that the

Policy was designed to address the situation where damage occurs and the civil authority *subsequently* prohibits access.”⁴⁸ Though the order prohibited access, it did not do so based on property damage within one mile of the insured premises.

The court did find, however, that a later September 2 order, which continued the prohibition of access and did so in light of damage to the city of New Orleans, could trigger coverage. But, the civil authority provision also included a 96-hour waiting period.⁴⁹ The insured argued that the 96 hours ran from the time the civil authority prohibited access (August 31, 2008) regardless of the absence of that requisite direct, physical loss.⁵⁰ The court disagreed, finding that the waiting period commenced when the coverage attached, on September 2, when the evacuation order was continued because of the direct physical losses suffered in New Orleans:

The Policy is resoundingly clear that coverage under the Civil Authority section requires not only an order prohibiting access but also physical loss within one mile of the office *and* a nexus between the prohibition order and the physical loss. It is unreasonable to interpret the 96-hour waiting period as commencing when the requirements for coverage under the section are not met.⁵¹

The insured also argued that once coverage was triggered, it only ended at the earlier of 30 days or when its business losses ended--when all of its timekeepers returned to work.⁵² The court rejected this reading of the policy language and pointed out that civil authority coverage applied to impairment of operations “directly caused” by prohibition of access to the premises. Once the order was rescinded, any impairment of operations was not caused directly by a civil authority's prohibition of access. The court reasoned: “The fact that the policy expressly includes two measures of time when coverage will terminate assuming that the requirements for coverage remain in effect, does not suggest that once coverage attaches it is ongoing notwithstanding that the very requirements for the coverage are no longer met.”⁵³

Civil action need not be formal or in writing but must be a complete prohibition. Action by a civil authority does not require a formal or even a written order. Instead “civil authority” encompasses “civil officers in whom a portion of the sovereignty is vested and in whom the enforcement of municipal regulations or the control of the general interest of society is confided.”⁵⁴ As an example, the court in *Kean, Miller, Hawthorne, D'Armond, McCowan & Jarman v. National Fire Insurance Co. of Hartford* found that state police and local government officials' “asking” and “encouraging” residents of Baton Rouge to stay off the streets constituted an “action of civil authority.”⁵⁵ However, that same court held that the second element requiring that the advisories and recommendations prohibit access was not met. Thus, courts have continued to uphold the requirement that the access to the described premises must be completely prohibited. A reduction in access is not enough.⁵⁶

Property damage triggering the civil action must be from a covered cause of loss. Courts have also required that the prohibition of access by civil authority must be from loss or damage caused by a “covered cause of loss” as that term is defined in the policy. In *Bamundo, Zwal & Schermerhorn, LLP v. Sentinel Insurance Co.*, a New York law firm claimed business income losses arising from Superstorm Sandy.⁵⁷ The insurance policy provided coverage for “the actual loss of Business Income you sustain when access to your ‘scheduled premises’ is specifically prohibited by order of a civil authority as the direct result of a Covered Cause of Loss to property in the immediate areas of your ‘scheduled premises.’”⁵⁸ At issue was whether the civil authority provision applied to the evacuation order where that order was prompted by flooding, which was excluded under the policy. The court found the language of this policy unambiguous.⁵⁹ The prohibition of access to the premises by civil authority must be as a result of a covered cause of loss to property in the immediate area. Because the policy excluded flooding as a covered cause of loss, and the language of the evacuation order repeatedly referenced flooding as the reason for the orders, the insured could not recover under the civil authority provision.⁶⁰

***26 Practical Considerations for Negotiating Civil Authority Coverage**

A review of the case law reveals that either policyholders were rarely successful in recovering lost profits under civil authority coverage or carriers carefully picked their battles under civil authority coverage after 9/11. Regardless, these decisions provide several major takeaways.

Both case law and policy language have emphasized the requirement of a nexus between the direct physical loss or damage and the civil authority action. As such, it is important to carefully examine the language of the order or civil action. Perhaps in response to the widespread effects of the 9/11 attacks and their impact on businesses worldwide, post-9/11 policies often geographically restrict where physical loss or damage must occur before it will be considered to be the cause of or basis for the civil authority action. Finally, even if the direct, causal connection can be established between the physical damage to property and the action of the civil authority, time restrictions may still come into play.

These coverages are important extensions that should be reviewed following any major catastrophic loss. Policyholders must be aware of these restrictions and how courts have interpreted them. The language of the policy is of course the guidepost for coverage. While policy language is always critical, in the context of civil authority coverage it is especially important as these provisions vary greatly and may impact whether a policyholder is entitled to coverage or not. While the standard ISO civil authority provision does not impose geographical restrictions, other policies have adopted language that is more restrictive. Specific attention should be paid to four areas where coverage may be limited: (1) geographical restrictions limiting coverage to instances where the incident giving rise to the civil authority order occurs within a certain distance from the insured premises; (2) time restrictions limiting indemnity for business losses to a certain time period after the civil authority order (and then also only after the application of a deductible); (3) restrictions concerning whether the damage giving rise to the civil authority order is considered a “covered loss” under the policy; and (4) restrictions on the limits of recovery, requiring a separate sublimit for civil authority coverage. These variations may prove too restrictive to grant adequate coverage for all policyholders.

Policyholders should also pay close attention to whether the policy's civil authority provision requires access to the insured premises be “prohibited” or “impaired.” “Impaired” policy language does not restrict coverage in only those instances where access to the insured premises is impossible; rather, this language takes into consideration the broader impact of a civil authority's action in the surrounding area. As discussed above, this distinction proved especially significant after the 9/11 attacks for businesses in the hotel and airline industries that were unable to recover lost profits from FAA flight cancellations that did not prohibit access to the insured property.

With these restrictions in mind, the policyholder should assess its business needs and determine whether its exposure to civil authority orders and resultant business interruption losses is above average. The case law arising from the 9/11 terrorist attacks indicates that all of these potential limits on coverage may operate to leave the policyholder without recourse.

TIP The language of civil authority orders will often determine if there is an extension of coverage, so read the orders as well as the policy.

Footnotes

^{a1} **Matt Weaver** is a shareholder with *Ver Ploeg & Lumpkin, P.A.*, in Miami, Florida, where he represents corporate, municipal, and individual policyholders in virtually every type of insurance coverage and bad faith dispute. He is a vice-chair of the *TIPS Property Insurance Law Committee*.

^{a2} **Margaret Hupp Fahey** is a partner in the Chicago office of *Clausen Miller P.C.*, where she focuses her practice on advising and defending carriers involved in first-party property insurance disputes. For over 30 years, she has represented insurers in complex coverage litigation, including bad faith claims, in jurisdictions throughout the United States.

a3 **Camilla Cohen** is an associate with *Ver Ploeg & Lumpkin*, where she represents policyholders in evaluating, settling, and litigating insurance coverage and extracontractual claims filed in state and federal court. They may be reached, respectively, at MWeaver@vpl-law.com, MFahey@clausen.com, and CCohen@vpl-law.com. This article is based on a paper presented at the ABA TIPS Property Insurance Law Committee Annual Meeting in April 2016.

1 See Scott G. Johnson, *Ten Years after 9/11: Property Insurance Lessons Learned*, 46 *Tort Trial & Ins. Prac. L.J.* 685, 706 (2011).

2 For an analysis of ingress/egress coverage, see *Royal Indem. Co. v. Retail Brand Alliance, Inc.*, 822 N.Y.S.2d 268, 270 (App. Div. 2006), and *Fountain Powerboat Indus., Inc. v. Reliance Ins. Co.*, 119 F. Supp. 2d 552, 556-57 (E.D.N.C. 2000).

3 11 Steven Plitt et al., *Couch on Insurance* § 167:1 (3d ed. 2015).

4 See, e.g., *Mac's Pipe & Drum, Inc. v. N. Ins. Co.*, 280 A.2d 308, 309 (D.C. 1971); *Two Caesars Corp. v. Jefferson Ins. Co.*, 280 A.2d 305, 307 (D.C. 1971); *Bros., Inc. v. Liberty Mut. Fire Ins. Co.*, 268 A.2d 611, 613 (D.C. 1970); *Southlanes Bowl, Inc. v. Lumbermen's Mut. Ins. Co.*, 208 N.W.2d 569, 570 (Mich. Ct. App. 1973); *Adelman Laundry & Cleaners, Inc. v. Factory Ins. Ass'n*, 207 N.W.2d 646, 647 (Wis. 1973).

5 See *September 11: Chronology of Terror*, CNN (Sept. 12, 2001), <http://edition.cnn.com/2001/US/09/11/chronology.attack/>; see also Johnson, *supra* note 1, at 709.

6 67 F. App'x 248 (5th Cir. 2003).

7 *Id.* at 248.

8 *Id.*

9 See also *S. Hospitality, Inc. v. Zurich Am. Ins. Co.*, 393 F.3d 1137, 1141 (10th Cir. 2004); *54th St. Ltd. Partners, L.P. v. Fid. & Guar. Ins. Co.*, 763 N.Y.S.2d 243 (App. Div. 2003).

10 See, e.g., *S. Hospitality*, 393 F.3d at 1140; *Syufy Enters. v. Home Ins. Co. of Ind.*, No. 94-0756 FMS, 1995 WL 129229, at *2-3 (N.D. Cal. Mar. 21, 1995); *54th St.*, 763 N.Y.S.2d at 243.

11 385 F. Supp. 2d 343, 348 (S.D.N.Y. 2005), *aff'd sub nom. United Air Lines, Inc. v. Ins. Co. of State of Pa.*, 439 F.3d 128 (2d Cir. 2006).

12 *Id.*

13 65 Va. Cir. 238 (2004).

14 *Id.*

15 *Id.*

16 See, e.g., *Hous. Cas. Co. v. Lexington Ins. Co.*, No. H-05-1804, 2006 U.S. Dist. LEXIS 45027, at *6 (S.D. Tex. June 15, 2006).

17 Gregory S. Thaler, *Hurricane Insurance Claims: Key Coverages in the Property Policy*, *Mealey's Litig. Rep.: Catastrophic Loss*, Oct. 2008.

18 The ISO is an insurance advisory committee that develops standard insurance policy forms. See www.verisk.com/iso.html.

19 Ins. Servs. Office, Inc. (ISO), *Bus. Income Coverage Form (& Extra Expense) Form CP 00 30 10 91*, ¶ A.3.b., *quoted in* Joyce M. Ondich, *Emerging Issues in Commercial Property Insurance*, Paper Presented at the 14th Annual Insurance Symposium 8-9 (Mar. 30, 2007), available at www.cooperscully.com/uploads/seminars/Ondich-EmergingIssues.pdf.

20 *Commstop, Inc. v. Travelers Indem. Co. of Conn.*, No. 11-1257, 2012 U.S. Dist. LEXIS 69962 (W.D. La. May 17, 2012); *Ski Shawnee, Inc. v. Commonwealth Ins. Co.*, No. 3:09-cv-02391, 2010 U.S. Dist. LEXIS 67092 (M.D. Pa. July 6, 2010).

21 See *supra* notes 6-8 and accompanying text (discussing *730 Bienville Partners*).

22 No. H-06-4041, 2008 U.S. Dist. LEXIS 11460 (S.D. Tex. Feb. 15, 2008).

- 23 *Id.* at *6.
- 24 *Id.* at *4-6.
- 25 *Id.* at *13.
- 26 *Id.* at *33.
- 27 *Id.* at *34.
- 28 *See also supra* notes 11-12 and accompanying text (discussing *United Airlines*).
- 29 636 F.3d 683 (5th Cir. 2011).
- 30 *Id.* at 684.
- 31 *Id.*
- 32 *Id.*
- 33 *Id.* at 685.
- 34 *Id.*
- 35 *Id.* at 686-87 (quoting Clark Schirle, *Time Element Coverages in Business Interruption Insurance*, 37 *The Brief*, no. 1, Fall 2007, at 32, 38).
- 36 *Id.* at 687.
- 37 No. 09-3376, 2009 U.S. Dist. LEXIS 81576 (E.D. La. Sept. 9, 2009).
- 38 *Id.* at *3.
- 39 *Id.* at *1-2.
- 40 *Id.* at *5 (alterations in original) (citations omitted).
- 41 *Id.* at *6-7.
- 42 *Id.* at *7.
- 43 *Id.*
- 44 No. 09-6057, 2010 U.S. Dist. LEXIS 109055 (E.D. La. Oct. 12, 2010).
- 45 *Id.* at *7-8.
- 46 *Id.* at *4-5.
- 47 *Id.* at *8-9.
- 48 *Id.* at *9.
- 49 *Id.* at *10-11.
- 50 *Id.* at *12.
- 51 *Id.* at *12-13.
- 52 *Id.* at *15.

- 53 *Id.* (emphasis omitted).
- 54 Kean, Miller, Hawthorne, D'Armond, McCowan & Jarman v. Nat'l. Fire Ins. Co. of Hartford, No. 06-770-C-M2, 2007 U.S. Dist. LEXIS 64849, at *9 (N.D. La. Aug. 2, 2007) (quoting [Narricot Indus., Inc. v. Fireman's Fund Ins. Co.](#), No. 01-4679, 2002 U.S. Dist. LEXIS 19074, at *12 (E.D. Pa. Sept. 30, 2002)).
- 55 *Id.* at *8-9.
- 56 *See, e.g.*, [Commstop, Inc. v. Travelers Indem. Co. of Conn.](#), No. 11-1257, 2012 U.S. Dist. LEXIS 69962 (W.D. La. May 17, 2012) [TMC Stores, Inc. v. Federated Mut. Ins. Co.](#), No. A04-1963, 2005 Minn. App. LEXIS 585 (June 7, 2005).
- 57 No. 13-cv-6672, 2015 U.S. Dist. LEXIS 39409, at *5-6 (S.D.N.Y. Mar. 27, 2015).
- 58 *Id.* at *2-3.
- 59 *Id.* at *11.
- 60 *Id.* at *12.

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