

Time-Element Losses During Catastrophes

By Jess B. Millikan

Time-element losses present difficult legal and adjustment issues under the simplest of circumstances. Where the loss affects a single insured with accurate and comprehensive financial records that suffered a distinct period of interruption, the adjuster is engaged in an imaginary exercise to estimate what that business would have spent and would have earned had there been no loss.

This exercise is more challenging where a significant regional catastrophe occurs. Natural disasters like earthquakes, hurricanes, and floods and man-made disasters like riots all disrupt the normal patterns of human commerce over a significant geographical region. They interrupt normal channels of communication and transportation and change the normal balance of supply and demand for services and products in the area. This disruption inevitably makes it more difficult to determine whether the conditions of coverage have been met and, if so, to measure the loss payable under the policy.

This article identifies the essential elements of a covered business interruption loss and discusses each element in the context of regional catastrophe situations. Where there are no case decisions construing the relevant policy provisions in the context of a natural or man-made disaster, cases discussing more local interruptions are referenced.

Business Interruption Coverage

Generally, “business interruption endorsements are intended to do for the insured what the business itself would have done had no interruption occurred.”¹ “On the surface, the purpose of time-element coverage is relatively simple: [to] replace the amount of earnings required to return the insured to the same financial condition that would have existed had no loss occurred.”² In practice, however, it often is not so simple. The actual policy language may not be so broad, and the contract may include terms and conditions that limit the coverage, leaving the insureds

believing they now have less than they would have earned in the absence of the catastrophe. (For a description of business interruption insurance, see the sidebar on page 3.)

Just as property insurance generally restores damaged real or personal property, placing the insured in the same *physical* situation as if no loss had occurred, business interruption insurance is intended to restore profits lost as a result of an insured casualty, placing the insured in the same *financial* situation as if the loss had not happened. Restoring the lost income, however, is a considerably more hypothetical exercise than replacing or repairing the damaged property. “Business interruption often involves theoretical calculations that involve significant projections such as a projection of the period of interruption and of the business that would have been conducted during the period of interruption.”³

As one author noted, “the insurer is not a bank, but a source of contractual reimbursement.”⁴ Adjustment of a business interruption loss therefore requires the parties to apply the terms of the policy against their best estimate of what the business would have earned had the loss not occurred.

A major regional catastrophe affects business interruption losses in at least two ways. First, because the catastrophe strains the resources of all the myriad trades and professions typically required to restore a damaged business—cleaners and dryers, carpenters, plumbers, contractors, architects and, of course, insurance adjusters—it is more difficult for the business to repair physical damage and resume operations. Business interruption policies typically provide coverage for losses sustained during a “period of restoration,” often defined as the time necessary to rebuild or repair “with due diligence and dispatch.” Where the repairs cannot be effected, the period of restoration is extended.

Second, the catastrophe directly affects the income that the business could reasonably expect to have earned but for its interruption. A hotel, for

example, might expect to capitalize on the hordes of insurance adjusters in the vicinity if it were not closed. Conversely, a grocery store might expect a reduction in sales if it remained open but all the homes in the vicinity were vacated. Depending on the language of the policy, courts have decided whether or not these effects of the catastrophe should be taken into effect in calculating the recoverable claim.

Proving a Loss

Compensable claims under business interruption policies typically require several elements. (For a list of these elements, see sidebar on page 4). As with other types of coverage, the insured generally bears the burden of proving each of these elements of the coverage grant.⁵

Triggering events

One might expect that the requirement of a triggering event would be uncontroversial in catastrophe situations. Not so. Business interruption coverage is typically triggered by physical damage to the insured property.⁶ Broader coverage is available, however, that insures income losses caused by physical damage to property of suppliers or customers; income losses caused by property damage that precludes ingress/egress from the insured premises; and income losses caused by orders of civil authority.

Rarely is there a dispute following a regional disaster, whether natural or man-made, about whether the insured property suffered physical damage. The more common issue following a catastrophe is whether there is coverage if the insured cannot do business but its property has not been physically damaged. Consider, for example, the numerous cases involving businesses closed during curfews or by similar orders of civil authority. Under some policy forms, some courts have found those orders sufficient to trigger coverage, but coverage has been denied for others.⁷

The policy considered in *Syufy Enterprises v. Home Insurance Co.*⁸ was particularly unusual because the coverage grant extended to losses sustained “during the length of time . . . when as a direct result of damage to or destruction of property adjacent to the premises herein described by perils insured against, access to such described premises is specifically prohibited by order of civil authority.” Syufy closed its theaters during curfews that were imposed following the verdict in the Rodney King case and contended that damage within the curfew

zones triggered this coverage grant. Judge Smith disagreed, both on grounds that damage several blocks away was not “adjacent” and on grounds that “no civil authority ever specifically prohibited any individual from entering a theater.”⁹

Disputes also arise over the trigger of coverage for business interruption losses in catastrophe situations where only some of the insured’s property is covered by the policy. In *Gregory v. Continental Insurance Co.*,¹⁰ a golf course was forced to close after a hurricane blew trees onto the course. Because only the office, pro shop, and restaurant building were insured, the covered loss extended only to the business loss sustained as a result of damage to those structures.¹¹

A third issue that raises unique trigger of coverage questions following a regional catastrophe concerns identification of suppliers and customers whose property damage might trigger contingent business interruption coverage even for an insured with no damage. Following the Mississippi River floods of 1993 that halted barge traffic on the river, Archer-Daniels-Midland (ADM) submitted claims for expenses incurred because of the increased cost of raw materials and the need for more expensive rail transportation of those materials. The pertinent coverage grant was for

loss of earnings and necessary extra expense resulting from necessary interruption of business of the insured caused by damage to or destruction of real or personal property . . . of any supplier of goods or services which results in the inability of such supplier to supply an insured locations [sic].¹²

The court held that the U.S. Army Corps of Engineers and the U.S. Coast Guard were “suppliers” of “services” by virtue of their duty to maintain the navigational system on the river, and recognized that ADM pays a “user charge” through the excise tax on fuel. As a result, the court found that, if there were physical damage to the locks and dams on the river, and if there were a causal connection between such damage and the restriction of barge traffic, the prerequisites for coverage would be met. The court also found coverage for the increased cost of the raw materials.

Extent of interruption

Although some policies extend coverage for partial interruptions, most coverage forms require a “suspension of operations.” Numerous cases recognize that a mere diminution in volume of business is not compensable under a business interruption policy, but

cases specifically involving regional catastrophe situations exist.¹³

Even where there has been a complete suspension of operations, there may be some doubt whether the suspension was caused by the physical damage or some other event. In *Harry's Cadillac-Pontiac-GMC Truck Co., Inc. v. Motors Insurance Corporation*,¹⁴ a snowstorm caused plaintiff's car dealership to be completely inaccessible for a week. Although the storm also damaged the roof of the dealership, that physical damage did not cause the closure of the business. The court held that

[t]he sole issue on appeal is whether plaintiff's alleged lost profits are covered under the language of the business interruption coverage provided by the insurance policy. Plaintiff argues that its inability to gain access to the dealership due to the snowstorm rendered the business as lost to plaintiff as it would have been "had the storm leveled the premises," and that this loss triggered coverage. Defendant contends, however, that, except for the damage to plaintiff's roof, which was covered by the policy and did not result in any interruption of the business, there was no "direct physical loss or damage" that resulted in a loss of business income during a period of restoration so as to come within the business interruption coverage. Thus, we must determine the meaning of the policy's language.

Recognizing well-established rules that require the policy to be strictly construed against the insurer, the court nevertheless denied coverage:

Based on the language used in defendant insurance company's policy, we hold that the business interruption clause is not applicable to the facts in this case. Plaintiff neither alleged nor offered proof that its lost business income was due to damage to or the destruction of the property, rather all the evidence shows that the loss was proximately caused by plaintiff's inability to access the dealership due to the snowstorm. There was no suspension of business due to the roof damage or the repairs thereto. We hold that, under the language of the business interruption clause of the policy, coverage is provided only when loss results from suspension of operations due to damage to, or destruction of, the business property by reason of a peril insured against.

The same issue arose, albeit in a different factual context, in *Dictiomatic, Inc. v. United States Fidelity & Guarantee Co.*, in which the insured contended that a suspension of its business caused by Hurricane Andrew resulted in millions of dollars of lost profits. Denying any recovery, the court explained:

In the present case, Dictiomatic proved that it sustained property damage from Hurricane Andrew, and that the damage caused suspension of operations

for 20 days. However, Dictiomatic failed to prove that but for the 20 day suspension of operations, it sustained an actual loss of business income which was caused solely by the hurricane and not by other factors. The evidence establishes that the lack of sales resulted from factors other than the hurricane, or the damage therefrom.¹⁵

Actual Loss Sustained

Calculating lost income is, by definition, speculative. Most policies expressly provide for consideration of the past history of the business and its profit, had no loss occurred. Where the calculation of business income is too speculative, however, recovery will be denied.¹⁶ Likewise, where the business is losing money, recovery will be allowed under most policy forms only to the extent that the business would have earned its operating expenses.¹⁷

The courts in *Dictiomatic* and *Continental v. DNE*, like many other courts to address these issues, expressly recognized that business interruption insurance "is intended to return to the insured's business the amount of profit it would have earned had there been no interruption of the business"¹⁸ and "to place it in the position it would have occupied if the interruption had not occurred."¹⁹ Some policies provide

Business Interruption Insurance

A classic description of business interruption insurance is based on the "6-P's" and the "6-E's":

[A] contract which insures a **Party** or **Parties** against loss resulting from damage to **Property** caused by an insured **Peril** which results in an interruption of **Productivity** for a **Period** of time with a resultant diminution of **Profit**.

An Insured can collect to the **Extent** of the loss **Experienced**, not resulting from **Excluded** causes, and also for **Extra** expenses incurred, provided he exerts the proper **Effort** to reduce loss and carries **Enough** insurance.

Source: Robert Morrison, *Business Interruption Insurance: Its Theory and Practice*, CINCINNATI NAT. UNDERWRITER (1987).

coverage for (a) the net profit or loss that would have been earned or incurred and (b) continuing normal operating expenses.²⁰ Other policies prescribe a calculation based on earnings less noncontinuing operating expenses. Some include, while others exclude, ordinary payroll. Regardless of the calculation, a company that has been losing money cannot improve its position with business interruption insurance.²¹

Calculation of income loss is particularly controversial where there has been a regional catastrophe that has a peculiar effect on the insured business. It seems the first court to consider this issue was the U.S. District Court for the District of South Carolina in *Prudential LMI v. Colleton Enterprises*.²² Colleton operated an Econo Lodge motel in Ladson, South Carolina, that was damaged by Hurricane Hugo. Colleton contended, and the court apparently agreed, that it “should recover under its insurance policy for profits it would have realized had the Econo Lodge been able to accommodate the influx of repair persons and construction workers in the Charleston area during the months after the hurricane.” Prudential contended, however, that

it need not indemnify Colleton for lost profits because the Econo Lodge had recorded losses in excess of \$350,000 during the 32-month period preceding Hugo and because the class of profits claimed—probable earnings resulting from accommodating the burgeoning demand due to the hurricane—was not covered under the policy.²³

Ultimately, looking to policy language mandating

that “due consideration shall be given to . . . the probable earnings . . . had no loss occurred,” the Fourth Circuit Court of Appeals reversed, holding that coverage was to be measured as though there had been no hurricane and denying recovery to Colleton. The appeals court explained:

Merely to state the claim is to confirm its intuitively-sensed logical flaw and its unreasonableness as a reflection of what the contracting parties rightly could have expected respecting policy coverage. It would allow the insured to have it both ways—by failing to carry the premise of the interrupting peril’s non-occurrence all the way through proof of “what the business would have done” in the circumstance. This simply will not do. For had the hurricane not occurred (the policy’s built-in premise for assessing profit expectancies during a business interruption), neither would the specifically claimed earnings source have come into being. To allow the claim therefore would be to confer a windfall upon the insured rather than merely to put it in the earnings position it would have been in had the insured peril not occurred. Business interruption insurance of the type in issue here is not intended to provide such windfall coverage.²⁴

In *American Automobile Ins. Co. v. Fisherman’s Paradise Boats, Inc.*,²⁵ however, the court followed *Colleton* and denied any recovery. The insured operated a business selling boats and marine accessories, which were allegedly in great demand following Hurricane Andrew. It contended that it should be entitled to recover an additional \$1,265,295 “because of its ‘lost opportunity in the increased economic opportunities afforded after Hurricane Andrew.’” Relying heavily on *Colleton*, the court rejected that claim, explaining that “Fisherman’s loss was a condition precedent to American Auto’s duty to pay the business interruption benefits, therefore the loss cannot be ignored for purposes of calculating the damage.”

Although the courts in *Colleton* and *Fisherman’s Paradise Boats* both appeared to find their conclusions logical and almost self-evident, given the well-recognized purpose of business interruption insurance, the most recent decision to consider this issue reached an opposite conclusion. *Levitz Furniture Corp. v. Houston Casualty Co.*²⁶ arose when Levitz Furniture Corp. was forced to close a store because of flood damage. In calculating its business interruption claim, Levitz sought recovery for lost profits from “increased consumer demand among other flood victims.”

The court permitted Levitz to recover, finding a significant difference between the language of Houston

Proving a Loss

A compensable claim under a business interruption policy typically requires the following elements:

- * an event that triggers coverage—usually physical damage to covered property caused by a covered peril, but under broader forms or those with extended coverages, the event can be closure by civil authority, damage to property of suppliers or customers, or even damage to property necessary for ingress/egress from the insured location;
- * a consequent interruption or suspension of the insured business; and
- * an actual loss of income during the period of interruption.

Casualty's policy and that at issue in *Colleton* and *Fisherman's Paradise Boats*. Whereas the earlier policies measured recovery based on "probable earnings . . . had no loss occurred," Houston Casualty's policy prescribed that "due consideration shall be given to . . . the probable experience . . . had no interruption of production or suspension of business operations or services occurred."

The *Levitz* court explained:

The court distinguishes between "no loss" and "no interruption." The meanings of these terms are self-evident: "no loss" means no damage, i.e. no flood, and "no interruption" means no business stoppage. By a plain reading of its terms, the court interprets that *Levitz*' policy covering business interruption losses includes consideration of earnings "that would have existed" had no business interruption occurred, i.e., had *Levitz* not been forced to close after the flood. The court hereby flatly rejects HCC's argument that the language "had no loss occurred" is implicit in the policy. The policy clearly and unambiguously provides coverage for earnings "had no interruption" occurred, and does not exclude profit opportunities due to increased consumer demand created by the flood.

Since *Colleton* and *Stamen*, the ISO has amended its business income forms to eliminate any claim to coverage for the "windfall" created for some businesses by a catastrophe situation. More current forms provide that

[t]he amount of Business Income loss will be determined based on . . . (2) The likely Net Income of the business if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses.²⁷

Period of restoration

The insured may recover only for losses sustained during the "period of restoration" and any extended period of indemnity afforded by the policy.²⁸ Under most policy forms, the period of restoration begins when the physical loss occurs and ends on the earlier of (a) "the date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality" or (b) "the date when business is resumed at a new permanent location."

Sometimes the insured has sufficient stock in its inventory to survive the period of restoration without any loss in sales. In *Pennbarr Corp. v. Insurance Co. of North America*,²⁹ for example, *Pennbarr Corp.* was such an insured, and when it submitted a claim

for business income losses allegedly resulting from earthquakes in Italy, the court denied recovery:

Remington argues that, if INA intended the indemnity period to run concurrently with the interruption of supply, INA should have changed the language "for only such time as would be required with the exercise of due diligence and dispatch to rebuild, repair or replace such contributing properties as have been damaged or destroyed, commencing with the dates of such interruption of the Insured's business and not limited by the expiration date of this policy" to "during such time as would be required. . . ." This is a distinction without a difference. Numerous courts, often without discussion, have treated virtually identical language as clearly establishing an indemnity period that runs concurrently with an interruption due to an insured peril and lasts until the damaged property is restored.³⁰

It is easier said than calculated to establish the amount of the "actual loss" or the proper "period of restoration." Even where there has been no regional catastrophe, disputes often arise over what time period should be encompassed in the period of restoration. In the Magula study referred to at the beginning of the article, "agreeing on a period of restoration" was the second most frequently identified issue challenging adjusters in resolving business income losses.³¹

"Bottlenecks" can affect the period of restoration. (For a list, see sidebar on page 6). Determining which of these factors legitimately increases the period of restoration and which does not requires careful analysis of the facts and the policy language.

The traditional view has been that the "period of restoration" is the time theoretically necessary to do the physical work of repairing/replacing the damaged property.³² In practice, however, courts tend to permit recovery for most, if not all, of the time actually consumed so long as the insured is not at fault for any delays. For example, the Arizona Court of Appeals in *Eureka-Security Fire & Marine Insurance Co. v. Simon*³³ affirmed a trial court determination that permitted recovery for time attributable to delays caused by the insured's landlord and by the insured's negotiations with other insurers. In another case, the Louisiana Court of Appeals held that, where the insured was unable to commence repairs until it received the insurance proceeds, the time spent adjusting the claim should be included in the reasonable repair period.³⁴

Some policies expressly provide that time lost in order to comply with building codes and ordinances does not extend the period of interruption.³⁵ *United*

Nuclear Corp. v. Allendale Mutual Ins. Co., the only reported decision to enforce such a policy provision, upheld a trial court determination that only one day out of a lengthy period of restoration was attributable to compliance with government regulations. The court assumed, without lengthy discussion or citation to any authority, that where the delay was due to a multitude of causes, only the time solely attributable to compliance was excluded.

Conclusion

A major disaster, whether natural or man-made, inevitably has a dramatic effect on the lives and businesses of citizens in the region. Because insurance proceeds are so often essential to the restoration of property and the survival of businesses impacted by the cataclysm, there is an extraordinary public focus on the adjustment of claims and an even greater than usual bias toward finding coverage and maximizing recoveries for policyholders.

The theoretical nature of the loss adjustment calculation under business interruption policies makes those coverages particularly vulnerable to expansion beyond what the insurer may have intended. Even with the clearest of policy language and the most complete financial history, the adjuster is still required to predict what would have happened in the absence of the loss, and that necessarily opens the door to differences of opinion about what might have been. ■

“Bottlenecks” Affecting the Period of Restoration

Some identified “bottlenecks” that can affect the period of restoration are:

- * Weather conditions
- * Acts of third parties (e.g., landlords, municipal authorities)
- * Availability of contractors, engineers, architects, etc., particularly after a catastrophe
- * Code/ordinance issues
- * Loss of qualified/trained employees
- * Time to replace or repair special or obsolete machines
- * Destruction of papers/records

Notes

1. 4 APPLEMAN INS. LAW & PRACTICE, § 2329.
2. Magula, *Questions of Time: Problems in Business Interruption Losses*, L.A. Chapter CPCU (May 2000), at 1.
3. Alan R. Miller, *Developments in Business Interruption Coverage*, PLRB/FICC Property Insurance Seminar (Sept. 19, 2000).
4. Magula, *supra* note 2, at 4.
5. *Dictiomatic, Inc. v. U.S. Fid. & Guar. Co.*, 958 F. Supp. 594 (S.D. Fla. 1997).
6. *But see Archer-Daniels-Midland Co. v. Phoenix Assurance Co. of New York*, 936 F. Supp. 534 (S.D. Ill. 1996) (holding that coverage grant for “extra expense sustained by insured as a result of direct physical damage caused by the perils insured against under this policy and not excluded elsewhere in this form” is not ambiguous, and “does not require that ‘direct physical damage’ be to property insured under the property damage coverage of the policies”).
7. *Cf. Southlanes Bowl, Inc. v. Lumbermen’s Mut. Ins. Co.*, 208 N.W.2d 569 (Mich. Ct. App. 1973) (Martin Luther King riots, permitting coverage); *Sloan v. Phoenix of Hartford Ins. Co.*, 207 N.W.2d 434 (Mich. Ct. App. 1973) (same) *with* *Brothers, Inc. v. Liberty Mut. Fire Ins. Co.*, 268 A.2d 611 (D.C. Ct. App. 1970) (Martin Luther King riots, denying coverage); *Two Caesars Corp. v. Jefferson Ins. Co.*, 280 A.2d 305 (D.C. 1971) (same), *Syufy Enterprises v. Home Ins. Co.*, No. 94-0756, 1995 WL 129229 (N.D. Cal. Mar. 21, 1995) (Rodney King riots, denying coverage). *See generally Where Have All the Customers Gone? Business Interruption Coverage for Off Premises Events*, THE BRIEF (Winter 2001), at 20.
8. No. 94-0756, 1995 WL 129229 (N.D. Cal. Mar. 21, 1995).
9. *Id.* at *2.
10. 575 So. 2d 534 (Miss. 1990).
11. Similar cases, albeit in the more common single-insured loss situations, include *Monumental Paving & Excavating Inc. v. Pa. Mfg. Assoc. Ins. Co.*, 176 F.3d 794 (4th Cir. 1999) (no coverage for business interruption resulting from fire that destroyed maintenance shop); *Royal Indem. Ins. Co. v. Mikob Prop., Inc.*, 940 F. Supp. 155 (S.D. Tex. 1996) (one building in three-unit apartment complex destroyed by fire; no coverage for reduction in occupancy in other two buildings); *Ramada Inn Ramogreen, Inc. v. Travelers Indem. Co. of Am.*, 835 F.2d 812 (11th

Cir. 1988) (no coverage for reduced occupancy in hotel caused by fire in hotel restaurant).

12. *Archer-Daniels-Midland Co. v. Phoenix Assurance Co. of N.Y.*, 936 F. Supp. 534, 540 (S.D. Ill. 1996).

13. See *National Children's Expositions Corp. v. Anchor Ins. Co.* (denying recovery where a snow-storm precluded visitors from attending an exposition); *Keetch v. Mutual of Enumclaw Ins. Co.* (denying recovery for decreased hotel occupancy following explosion of Mt. St. Helens).

14. 486 S.E.2d 249 (N.C. Ct. App. 1997).

15. 958 F. Supp. 594, 602-03 (S.D. Fla. 1997).

16. See, e.g., *Dictiomatic*, 958 F. Supp. at 605.

17. See, e.g., *Cont'l Ins. Co. v. DNE Corp.*, 834 S.W.2d 930 (Tenn. 1992).

18. *Dictiomatic*, 958 F. Supp. at 603.

19. *Continental*, 834 S.W.2d at 934 (citations omitted).

20. See *id.* at 931.

21. See, e.g., *Dictiomatic*, 958 F. Supp. at 603 (“*Dictiomatic* can recover only to the extent that it actually lost sales or business during the periods when the business premises and business property were not functioning.”) (citing cases).

22. No. CA-90-2774-2-1J (D.S.C.—Charleston) (Carr, Magistrate Judge).

23. *Prudential LMI Commercial v. Colleton Enters., Inc.*, 976 F.2d 727, No. 91-1757, 1992 WL 252507, at *1 (4th Cir. Oct. 5, 1992) (unpublished opinion).

24. *Id.*, 1992 WL 252507, at *4 (citation omitted). But see *Stamen v. CIGNA Prop. & Cas. Co.*, No. 93-1005 (S.D. Fla., 1994) (cited in Alan R. Miller, *Developments in Business Interruption Coverage*, PLRB/FICC Property Insurance Seminar (Sept. 19, 2000)), in which Florida federal district court reached contrary result.

25. Nos. 93-2349CIVGRAHAM, 94-0014CIVGRAHAM, 1994 WL 1720238 (S.D. Fla. Oct. 3, 1994).

26. No. CIV. A. 96-1790, 1997 WL 218256 (E.D. La. Apr. 28, 1997).

27. ISO Form CP 00 30 06 95.

28. *Lexington Ins. Co. v. Island Recreational Devel. Corp.* 706 S.W.2d 754 (Tex. Ct. App.—Beaumont), writ refused n.r.e. (1986).

29. 976 F.2d 145 (3d Cir. 1992), reh'g denied (Oct. 21, 1992).

30. *Pennbarr*, 976 F.2d at 154 (court's emphasis, bracketed language, and ellipsis) (citations omitted). Compare *Rubbermaid v. Hartford Steam Boiler Inspection Co., Inc.*, 645 N.E.2d 116 (Ohio Ct. App. 1994), appeal not allowed, 644 N.E.2d 409 (1995) (court held that insured need not totally deplete inventory).

31. *Magula*, *supra* note 2, at 2.

32. See, e.g., *Steel Prods. Co., Inc. v. Millers Nat'l Ins. Co.*, 209 N.W.2d 32 (Iowa 1973); *Beautytuff Inc. v. Factory Ins. Ass'n*, 431 F.2d 1122 (6th Cir. 1970); *Congress Bar & Restaurant, Inc. v. Transamerica Ins. Co.*, 165 N.W.2d 409 (Wis. 1969).

33. 401 P.2d 759 (Ariz. Ct. App. 1965).

34. *United Land Investors, Inc. v. N. Ins. Co. of Am.*, 476 So. 2d 432 (La. Ct. App. 1985). But see *Jonari Mgmt. Corp. v. St. Paul Fire & Marine Ins. Co.*, 448 N.E.2d 427 (N.Y. 1983) (denying coverage under policy for time allegedly attributable to insurer's delay); *Salamey v. Aetna Cas. & Sur. Co.*, 741 F.2d 874 (6th Cir. 1984) (if insurer unreasonably resists claim, insured has extracontractual remedy for loss of income, not contractual right under business interruption coverage).

35. See *United Nuclear Corp. v. Allendale Mut. Ins. Co.*, 709 P.2d 649, 656 (N.M. 1985) (business interruption policy covered “loss of production” but excluded increases in business losses resulting from compliance with “law and ordinance” requirements).

Jess B. Millikan is a shareholder in *Bullivant, Houser, Bailey PC*, and is the shareholder-in-charge of the firm's San Francisco office.

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