DIRECT V. INDIRECT OFF PREMISES BUSINESS INCOME LOSSES MOUNT ST. HELENS AND BEYOND

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I. INTRODUCTION

With the increased number of natural disasters comes an increase in types of losses and business interruption losses. While policyholders can protect themselves by purchasing "all-risk" insurance policies, certain causes of loss will still be specifically excluded or only available under specialized endorsements or policies. Particularly with natural disasters, coverage becomes complicated when the resulting damage is a synergistic action of a covered (*i.e.,* wind) and an excluded peril (*i.e*., earth movement, flood). Which provision governs?

Similarly, businesses can protect themselves by purchasing business interruption insurance, to ensure that a business's revenue stream continues during a period of interruption. Often times, however, such insurance may not insure the business for the amount thought. Additional disputes can arise regarding the valuation of the business interruption loss, leading to court intervention and interpretation.

This paper will provide a historical perspective of various issues which have arisen with direct vs indirect losses, including the application of the efficient proximate cause rule in business interruption claims, starting with the Mount St. Helen's eruption moving forward to more current natural disasters such as Hurricane Katrina.

II. PROXIMATE CASUATION

Multiple causes of loss are common when a natural disaster strikes. The eruption of the Mount St. Helens volcano caused a series of events that lead to volcanic mudslides, earthquakes and flooding, among other causes of loss, not directly caused from the eruption itself. Similarly, Hurricane Katrina caused severe wind and flooding damage without the hurricane physically

damaging the property. The overlapping causes of loss bring particular complexities to insurance coverage, specifically where one loss in the chain of events is covered, and another loss is not. A typical coverage provision generally excludes coverage caused directly or indirectly from an excluded peril.

III. BUSINESS INTERRUPTION COVERAGE

Business interruption insurance's purpose is typically defined as "insurance to protect the insured against losses that occur when its operations are unexpectedly interrupted, and to place it in the position it would have occupied if the interruption had not occurred."[1] Often referred to as "time element" coverage, business interruption coverage has developed into in two forms: Business Interruption or "BI" coverage and "Contingent" Business Interruption or "CBI" Coverage. A business which suffers direct physical loss or damage due to a natural disaster itself will file a BI claim under its policy. Whereas, a business that loses customers or critical supplies as a consequence of physical damage to the property of others, and which itself is not physically damaged, will seek coverage under the CBI provisions of its policy. The key distinguishing factor between a BI and CBI claim is the property which sustains the physical damage. Under a CBI claim, the insured business must establish that it lost income as a result of physical damage to the property of another, such as a customer or supplier.

Widely available, business interruption coverage can be introduced under various names within an insurance policy: "Business Interruption", "Business Income", "Gross Earnings", and "Time Element Earnings". A typical coverage provision reads as follows:

[1] *Cont'l Ins. Co. v. DNE Corp.,* 834 S.W.2d 930, 934 (Tenn. 1992).

BUSINESS INCOME

1. We will pay for the actual loss of Business Income you sustain due to the necessary 'suspension' of your 'operations' during the 'period of restoration.' The 'suspension' must be caused by direct physical loss of or damage to property at the premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of loss….[2]

Many policy forms are different and a review of the specific policy language and definitions is necessary to determine what qualifies as the loss under such a provision. Notwithstanding such variations, the elements needed to establish a BI or CBI claim are typically uniform: (1) physical damage[3]; (2) to covered property; (3) caused by a covered peril during the policy period; (4) resulting in an actual loss of income; (5) due to the "necessary suspension of operations"; (6) during the period of restoration. It is under these various elements that Courts have differed on their interpretations of what an insured is entitled to as a result of direct or indirect business income loss.

IV. MOUNT SAINT HELENS ERUPTION

On May 18, 1980, a major volcanic eruption occurred at Mount St. Helens, a volcano located in the state of Washington. The eruption was the only significant one to occur in the contiguous 48 U.S. states since the 1915 eruption of Lassen Peak in California.[4] An eruption column rose 80,000 feet (approximately 15 miles) into the atmosphere and deposited ash in eleven (11) U.S. states.[5] At the same time, snow, ice and several entire glaciers on the volcano

[2] ISO CP 00 30 06 07
[3] Some policies will provide that physical damage is not required for coverage. In *Hampton Foods, Inc. v. Aetna Cas. & Sur. Co.,* 787 F.2d 349 (8th Cir. 1986), concluded that the policy would provide coverage for business income losses resulting from "risk of direct physical loss", where the building was in imminent danger of collapse, but had not yet suffered physical damage.
[4] Fisher, R.V.; Heiken, G.; Hulen, J. (1998). *Volcanoes: Crucibles of Change*. Princeton University Press. p. 294.
[5] Harden, Blaine (May 18, 2005). "Explosive Lessons of 25 Years Ago". *The Washington Post*. p. A03. Retrieved 2016-03-08.

melted, forming a series of large lahars (volcanic mudslides) that reached as far as the Cowlitz River, nearly 50 miles downstream from the volcano.[6]

As a result of the eruption, approximately fifty-seven people were killed directly.[7] Hundreds of square miles were reduced to wasteland, causing over a billion U.S. dollars in damage, and thousands of game animals were killed. [8] The entire side and top of Mount St. Helens was blown off, leaving a gaping crater on its north side.

a. EFFECTIVE PROXIMATE CAUSE

Prior to the Mount St. Helen's eruption, the law in Washington applied the "immediate physical cause analysis." The seminal case, *Bruener v. Twin City Fire Ins. Co,* stated that:

> In tort cases, the rules of proximate cause are applied for the single purpose of fixing culpability, with which insurance cases are not concerned. For that purpose, the tort rules of proximate cause reach back of [sic] both the injury and the physical cause to fix the blame on those who created the situation in which the physical laws of nature operated. The happening of an accident does not, in itself, establish negligence and tort liability. The question is always, why did the injury occur. Insurance cases are not concerned with why the injury occurred or the question of culpability, but only with the nature of the injury and how it happened.[9]

In other words, if the "immediate physical cause" of the damage was excluded, but the excluded cause was set into motion by a chain of events from an otherwise covered loss, then

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[6] 1980 Cataclysmic Eruption, Cascades Volcano Observatory. Available at *http://volcanoes.usgs.gov/volcanoes/st_helens/st_helens_geo_hist_99.html*

[7] Alan Taylor (May 18, 2015). "The Eruption of Mount St. Helens, 35 Years Ago". *The Atlantic.* Retrieved 2016-03-08.

[8] Impact and Aftermath, USGS. Available at http://pubs.usgs.gov/gip/msh/impact.html; United States International Trade Commission, *The Economic Effects of the Eruptions of Mt. St. Helens,* 1980-06-18. Available at https://volcanoes.usgs.gov/vsc/file_mngr/file-78/pub1096.pdf

[9] 222 P.2d 833, 835 (1950)

there would be no coverage for the resulting damage. This test represented a minority jurisdictional view in light of the preferred "effective proximate cause" analysis.[10]

Graham v. Public Employees Mutual Insurance[11] presents an example in the homeowners context. There, the eruption of Mount St. Helens triggered flooding and mudflows which destroyed the insureds' residences. The polices involved in *Graham* covered explosions as a peril under certain circumstances but excluded losses resulting "directly or indirectly" from earth movement, including mudflows:

> SECTION 1—EXCLUSIONS
> We do not cover loss resulting directly or indirectly from:
>
> 2. Earth Movement. Direct loss by fire, explosion, theft, or breakage of glass or safety glazing materials resulting from earth movement is covered.
> 3. Water damage, meaning:
> a. flood, ...[12]

The trial court granted the insurers' motion for summary judgment that there was no coverage due to the excluded cause of loss (earth movement). The insureds appealed, arguing that the cause of the earth movement was an eruption, which is not excluded.

The Washington Supreme Court, applying the majority of jurisdictions' "efficient proximate cause" analysis, held that the policy language in the earth movement exclusionary clause could not be the basis for the insurer's denial of duty to indemnify its insured under the policy.[13] Reasoning that a prior occurrence (i.e., the eruption of Mount St. Helens) might well have set into motion a series of uninterrupted events leading to the landslide that damaged the insureds' homes, the court noted that the eruption could qualify as the "efficient" or

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[10] *Villella v. Pub. Employees Mut. Ins. Co*., 725 P.2d 957, 963 (Wash. 1986).
[11] 656 P.2d 1077 (Wash. 1983).
[12] *Id.* at 1079.
[13] *Id.* at 1080. The Court noted that the *Bruener* decision was an anomaly, inconsistent with the rule in the majority of other jurisdictions and should be discarded.

"predominant" proximate cause of the insureds' damages. The court held that the policy's earth movement exclusionary clause did not, as a matter of law, exclude coverage for the damages to the homes because the efficient proximate cause may well have been the eruption of Mount St. Helens, the first occurrence in the chain of events that culminated in the landslide that impacted the insureds' homes (i.e., the last event in the sequence). The Washington Supreme Court remanded back to the trier of fact the question of whether it was the eruption of Mount St. Helens that set into motion a chain of events culminating in the landslide which damaged the insureds' homes, i.e., was the proximate cause of the damages.

The Washington Supreme Court in *Safeco v. Hirschmann*[14] once again revisited the application of the efficient proximate cause rule in relation to insurance policy exclusionary clauses which attempt to exclude coverage for landslide damages. The court affirmed its position that insurers could not avoid the application of the efficient proximate cause rule regardless of the language of the exclusionary clause in the insurance policy. Specifically, the language in the Safeco insurance policy attempted to exclude coverage for a loss caused by any excluded peril "whether occurring alone or in any sequence with a covered peril."[15] Safeco attempted to avoid covering a loss where a landslide was the proximate cause or merely the final link in the causal chain. In response, the Court (citing to both *Villella*[16] *and Graham*), reiterated that it had declined and would continue to decline an insurer attempting to circumvent the rule by use of its exclusionary clause.

[14] 773 P.2d 413 (Wash. 1989).
[15] *Id.* at 414.
[16] *Villella v. Pub. Employees Mut. Ins. Co*., 725 P.2d 957 (Wash. 1986).

b. BUSINESS INTERRUPTION

As a result of the Mount St. Helens eruption, the Washington Appellate Court was forced to address the issue of business interruption coverage as a result of indirect damage. In *Keetch v. Mut. of Enumclaw Ins. Co.*[17], the plaintiff's motel was buried in six inches of ash after Mount St. Helens erupted. Although the motel suffered a dramatic decrease in hotel occupancy, it remained open for business. The insurer agreed that the eruption was an "occurrence" and that coverage extended to the cleanup and repair expenses. However, the insurer denied coverage for business interruption benefits.

The insured argued that because part of the motel suffered a covered loss due to damages from the volcanic ash, the policy's business interruption coverage extended to the income lost from a reduction in the quality of service and a decrease in occupancy. The insurer argued that because the motel was not required to suspend operations after the eruption, such losses were not covered. The policy at issue contained the following language:

> 1. ... this policy is extended to insure against loss of earnings resulting directly from necessary interruption of business caused by the perils insured against damaging or destroying ... real or personal property ... at the premises
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> . . . . .
>
> 2. The Company shall be liable for:
> a. the actual loss sustained by the insured resulting directly from necessary interruption of business ... for only such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property herein described as has been damaged or destroyed ... Due consideration shall be given to the continuation of normal charges and expenses, ... to the extent necessary to resume operations of the insured with the same quality of service which existed immediately preceding the loss; and
> ....
> ....

[17] 831 P.2d 784 (Wash. App. 1992)

> 4. Resumption of Operations: It is a condition of this insurance that if the insured could reduce the loss resulting from the interruption of business:
> a. by complete or partial resumption of operation of the property herein described, whether damaged or not,...
> ....
> such reduction shall be taken into account in arriving at the amount of loss hereunder.[18]

The court of appeals reversed, holding that business interruption insurance only covers losses resulting from an inability to continue to use specified premises. The physical damage to part of the insured's premises did not cause a necessary suspension of operations or tenancy in the other, undamaged units. A reduction in the "quality of life" in the undamaged parts of the premises does not trigger the business interruption clause.[19] "The endorsement does not provide that coverage exists because the motel's quality of service may be diminished by an occurrence."[20] The trial court erred in holding the insureds suffered a business interruption covered by their loss of earnings endorsement.

V. OTHER CATASTROPHIC LOSSES

a. EFFECTIVE PROXIMATE CAUSE

In *Leonard v. Nationwide Mut. Ins. Co.*[21], following Hurricane Katrina, the insureds brought suit against their homeowners' insurer to recover for damage to their residence caused by wind damage and storm surge from Hurricane Katrina. The Court recognized that while the default causation rule in Mississippi was the doctrine of efficient proximate cause, the policy at

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[18] *Id.* at 785.
[19] *Id.* at 786. *See also Apartment Movers of Am., Inc. v. OneBeacon Lloyd's of Texas*, 2005 WL 106477 *3 (N.D. Tex. Jan. 19, 2005), aff'd, 170 Fed. Appx. 901 (5th Cir. 2006) (the necessary suspension of operations "must come, not from a lack of customer demand, but of an inability to meet customer demand. In other words, if Plaintiffs are able to fully perform their operations, there is no 'necessary suspension' simply because they do not have as much business as they once did."); Royal *Indemnity Insurance Co. v. Mikob Properties, Inc.,* 940 F.Supp. 155, 160 (S.D.Tex. 1996) (No coverage for reduction in occupancy and resulting loss of rental income following fire in part of apartment complex because the entire complex did not experience an actual suspension of operations).
[20] *Keetch,* 831 P.2d at 786.
[21] 499 F.3d 419, 431-32 (5th Cir. 2007).

issue contained an anti-concurrent causation ("ACC") provision, and that no case law purported to "enshrine efficient proximate causation as an immutable rule of Mississippi insurance policy interpretation" for hurricane claims.[22] Specifically, the Court relied upon a string of prior case precedent involving the effect of ACC clauses related to earth movement that abrogated the default efficient proximate causation rule and excluded damage caused by both a covered and an excluded peril. The Court noted that these cases reflected the general contract principle that "where a clause in a contract does not violate any statute, or public policy, and is unambiguous and certain in its provisions, it is enforced as written."[23]

Similarly, other courts have endorsed using ACC clauses to circumvent default causation rules like efficient proximate cause. In *TNT Speed & Sport Center, Inc. v. American States Insurance Co.*[24], a vandal removed sandbags from a levee protecting a go-cart track from the waters of the Mississippi River causing the levee to collapse and river water damaged the insured's property. The insurance policy covered losses caused by vandalism, but excluded flood losses, and contained an ACC clause that excluded coverage for damage arising concurrently from a covered and an excluded peril. The Eighth Circuit noted that state law did not bar application of the ACC clause, and that the plain meaning of the ACC clause's exclusionary language was to directly address, and contract out of, the efficient proximate cause doctrine."[25] A majority of states that have considered the matter enforce ACC exclusion clauses,

[22] *Id.* at 433.
[23] *Id.* at 432.
[24] 114 F.3d 731 (8th Cir.1997)
[25] *Id.* at 733; *see id.* (Collecting state Supreme Court decisions upholding ACC clauses). *See also Front Row Theatre, Inc. v. Am. Mfrs. Mut. Ins. Companies,* 18 F.3d 1343, 1347 (6th Cir.1994) (upholding an ACC clause barring coverage for concurrently caused water losses (citing *Schroeder v. State Farm Fire & Cas. Co.,* 770 F.Supp. 558, 561 (D.Nev.1991))).

however, only Washington and West Virginia do not allow abrogation of the default rule via an ACC clause. California and North Dakota require efficient proximate causation by statute.[26]

b. DIRECT BUSINESS INTERRUPTION

In *Newman Myers Kreines Gross Harris, PC v. Great Northern Ins. Co*[27]*.,* the insured, a law firm, filed suit to recover under its commercial property insurance policy for loss of business income and expenses resulting from its inability to access its office during a power outage. In preparation for Superstorm Sandy, Con Edison, the entity responsible for supplying electrical power preemptively shut off the power to three utility service networks, including the one which provided service to the plaintiff's building. As a result, plaintiff's building was without power and plaintiff could not resume normal business operations for more than 5 days. The insured law firm brought a claim for loss of business income and extra expenses incurred as a result of the loss of power to the office space. The insurance company denied the claim, stating that a covered loss had not occurred. Under the policy, the question was whether the insured premises experienced "direct physical loss or damage". While the plaintiff conceded that its office did not sustain any structural damage as a result of Superstorm Sandy, it argued that it still sustained "direct physical loss or damage" under the policy in that (1) the cessation of electrical services could be interpreted as direct physical loss or damage because it made ingress and egress impossible; and (2) the Con Edison Facility sustained direct physical loss or damage in the week that followed because of the threat of structural damage posed by the anticipated flood.

The court concluded that the policy language "direct physical loss or damage" required some form of "actual, physical damage to the insured premises to trigger loss of business income

[26] *See* 4 DAVID L. LEITNER ET AL., LAW AND PRACTICE OF INSURANCE COVERAGE LITIGATION § 52:37 (2007); 7 COUCH ON INS. § 101:45; Joseph A. Ziemianski et al., *Emerging Property and CGL Insurance Claims Trends,* 742 Practising Law Institute Litigation and Administrative Practice Course Handbook Series 251, 281 & n.111 (2006).
[27] 17 F. Supp. 3d 323 (S.D. NY 2014).

and extra expense coverage."[28] The court found that the plaintiff could not show any loss or damage due to either its inability to access the offices, or Con Edison's decision to shut power off to the building. Noting that the words of the policy ordinarily connote actual, demonstrable harm of some form to the premises itself, rather than forced closure of the premises for reasons exogenous to the premises themselves. The court further concluded that construing the phrase "direct physical loss or damage" to require actual, physical damage to the insured premises gives effect to all the provisions of the policy. As such, the insured failed to meet its burden to show the policy covered its losses, and summary judgment was granted in favor of the insurer.

In *United Airlines, Inc. v. Ins. Co. of State of Pa.*[29], following the September 11th plane hijackings the FAA closed all operations and all airports nationwide. United's ticket counter in the World Trade Center was destroyed and it also claimed that its gate property at Washington Reagan National Airport was physically impacted by the terrorist attacks on the Pentagon. United submitted a sworn statement in proof of loss to its insurers stating that its losses due to September 11th exceeded one billion dollars. In support of its position, United argued that the Policy's insuring agreement did not require 'physical damage' at the insured location to trigger business interruption coverage.[30] The insurer argued that the plain and ordinary meaning of the word "damage" conveyed physical damage and argued that the word "physical" did not need to be expressly provided in the policy. The Court concluded that physical damage was required to trigger the policy's business interruption coverage. Specifically, the Court noted that if the word "damage" was intended to include economic as well as physical damage, the Civil Authority clause would be superfluous.

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[28] *Id.* at 331.
[29] 385 F. Supp. 2d 343 (S.D. N.Y. 2005).
[30] *Id.* at 348.

United further argued that if physical damage is required, that it indisputably suffered physical damage when its ticket counter at WTC was destroyed and that its gate property at Reagan Airport was damaged. The Court found United's position untenable, concluding that the destruction of the ticket counter and/or damage to gate property did not trigger coverage for a system-wide business interruption claim exceeding one billion dollars. As such, the Policy's requirement that there be a direct correlation between the amount of recovery and actual damage suffered was not met.

In *Catlin Syndicate Limited v. Imperial Palace of Mississippi, Inc.*[31], following Hurricane Katrina, the insurer brought suit against its insured seeking a declaration as to the amount of business interruption losses owed under the policy. The insured, Imperial Palace, a casino, sustained damages following Katrina which required it to shut down for several months. After it re-opened, revenues were much greater than before the hurricane, as many casinos remained closed. The insurer and insured had a significant disagreement in the amount of the business interruption. In relevant part, the policy provided that in determining the amount of the Time Element loss "due consideration shall be given to experience of the business before the loss and the probable experience thereafter had no loss occurred."[32] The insurer sought to determine Imperial's loss by looking solely at its pre-hurricane sales, whereas the insured argued the proper measure was to consider a situation in which Hurricane Katrina struck, but did not damage Imperial's facilities. The Court concluded that under the business-interruption provision at hand, only historical sales figures should be considered in determining loss, and sales figures after reopening should not be taken into account.

[31] 600 F.3d 511 (5th Cir. 2010).
[32] *Id.* at 514.

In *Levitz Furniture Corp. v. Houston Casualty Co.*[33], the court allowed an insured furniture store to recover increased profits it would have earned had it been open during a period when many people were having to buy new furniture because of flood damage. The policy language required the insurer to give due consideration to the insured's experience before the loss and probable experience after the loss and "to continuation only of those charges and expenses that would have existed *had no interruption of production or suspension of business operations or services occurred.*"[34] The court interpreted the phrase "no interruption of production or suspension of business operations or services" to refer only to the insureds operations and thus held that the insured could recover the profits it would have been able to make had it remained open in the favorable furniture market created by the flood – that is had there been "no interruption" of its operations.

In *Buxbaum v. Aetna Life & Casualty Co*.[35], a law firm's office was damaged when a broken water pipe flooded the property and destroyed the firm's computer system. The law firm made an insurance claim for business interruption coverage for more than $6,000 in billable time while the computer system was being repaired. However, some of the firm's lawyers billed at least some time on every business day during the period of repair. The court found that in the absence of a complete cessation of business, the firm was not entitled to business interruption coverage.

[33] 1997 WL 218256 (E.D.La. Apr. 28, 1997).
[34] *Id.* at *3.
[35] 126 Cal. Rptr. 2d 682 (2002).

c. INDIRECT BUSINESS INTERRUPTION

In *Pentair, Inc. v. American Guarantee and Liability Ins. Co.*[36], the insured manufacturer brought a breach of contract suit against the insurer for failure to pay a claim under contingent time element coverage following an earthquake that struck Taiwan in September, 1999. The earthquake disabled a substation that provided electric power to two Taiwanese factories, such that the factories could not manufacture products they were supplying to Pentair. Production resumed after two weeks, resulting in more than half a million dollars in extra costs to meet customer needs. The trial court held that the extra expense loss was not covered under the Policy because the electric substation was not a "supplier" and that the power outage did not cause "direct physical loss or damage" to the "suppliers". The Eighth Circuit Court of Appeals agreed, holding that the Taiwanese power company did not supply a product or service ultimately used by Pentair, and therefore did not qualify as a supplier of goods or services. The Eighth Circuit Court of Appeals also concluded that the mere loss of use or function, due to the loss of power, did not constitute "direct physical loss or damage" under the terms of the policy.[37] Lastly, the Court concluded that the business interruption coverage extending to power outrages did not cover losses due to power outages of suppliers.

In *Safeguard Storage Properties, L.L.C. v. Donahue Favret Contractors, Inc.*[38], the Court held that an insured may have coverage for business opportunities it was unable to pursue. In *Safeguard Storage,* a national conglomerate self-storage business sought monetary damages under its insurance policy for lost business opportunities for the business locations it was allegedly unable to open due to Hurricane Katrina. Based on prior growth trends, the self-

[36] 400 F.3d 613 (8th Cir. 2005).
[37] *Id.* at 616.
[38] 60 So. 3d 110 (La. App. 4 Cir. March 31, 2011).

storage business sought recovery for lost business development opportunities for thirty-seven future stores for thirty-nine years resulting in approximately $300 million in net income lost business opportunity as a result of Hurricane Katrina. The defendant insurers filed, and were granted, summary judgment on the basis that lost business opportunities claims were too speculative as a matter of law and the self-storage business could only recover damages sustained during the applicable period of recovery. The trial court noted that the alleged future stores did not have specific addresses and the loss was, therefore, too speculative as a matter of law. On appeal, the Louisiana Court of Appeals reversed, holding that that genuine issues of material fact exist as to whether the self-storage business incurred a loss of business opportunities during the two applicable recovery periods.

In *Millennium Inorganic Chemicals Ltd. v. Nat'l Union Fire Ins. Co. of Pittsburgh*[39], the Court held that the insured was not entitled to CBI coverage due to interruption of business as a result of a natural gas explosion procured through an intermediary. The insured in *Millennium Inorganic Chemicals* was an international corporation with operations in Western Australia where it manufactured titanium dioxide. The insured had to shut down operations at its Australian production facility when the facility lost its supply of natural gas as a result of an explosion at a natural gas production facility in Australia. The CBI coverage provision required that the contributing property, here the supplier of natural gas, be a "direct contributing property" to the insured's business locations. Unfortunately for the insured, the insured did not buy the gas directly from the natural gas supplier but rather through an intermediary. As a result, the Court ruled that distant suppliers and customers not in privity with the insured cannot qualify for CBI coverage under the CBI policy language "direct contributing property."

[39] 744 F.3d 279 (4th Cir. 2014).

VI. CONCLUSION

As natural disasters and catastrophic losses continue to occur, business interruption losses – both direct and indirect - will continue to increase. While various states and various natural disasters have had an impact upon the interpretation of and analysis of business interruption claims throughout the Country, the single most important determination to whether the insurance contract will provide coverage is and remains the Policy.