

Southern Exposure: Recovering Business Interruption Loss From Winter Storms & Rolling Blackouts

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When warmer weather finally returns to Texas and neighboring states, homes and businesses hope to see electricity and other essential utility services restored and human suffering relieved. But even after the lights come back on, many businesses will have lost millions of dollars in revenue from winter storms and rolling blackouts over the past week. Still others will have incurred substantial expense to maintain operations and prevent damage to insured property. Businesses who have lost income or sustained property damage or extra expense from days of snow and utility interruptions should determine whether commercial business interruption and related coverages may compensate for such losses.

Although individual policy terms will vary, most commercial property insurance policies provide coverage for the following:

- **Business Interruption Loss.** This coverage insures the loss of profits or revenue the insured sustains when operations are suspended due to direct physical loss or damage to covered property. The coverage usually compensates for loss of gross revenue, less expenses saved by the suspended or reduced operations. Subject to individual limits and deductibles, this coverage extends for a defined period of time needed to restore, rebuild or repair the damaged/lost property. Some policies further extend the period of coverage to include the time needed to bring business operations to the condition that would have existed absent the underlying loss or damage.

In some cases, this week's winter weather may have caused physical damage to insured buildings, including roofs, pipes and interiors. In other cases, storms may have caused covered "loss" of insured property even absent physical damage as severe weather and related travel restrictions rendered insured premises unusable. Either way, the resulting loss of revenue caused by loss or damage to covered property may be recoverable, subject to applicable limits or deductibles.

- **Service Interruption Loss & Damage.** This policy benefit compensates the insured for loss (either in the form of property damage or loss of revenue) caused by the interruption of incoming or outgoing utilities and other services, including electricity, gas, fuel, steam, water, refrigeration, sewage, voice, data or video services. The loss of service must be the result of otherwise covered physical loss or damage to the service provider's property. Service interruption coverage is typically subject to a qualifying period or waiting period. Depending on policy terms, this period may be measured in hours or days.

For so many policyholders, the past week has brought rolling or continuous power outages that have rendered normal operations impossible. In some locations, water service has also been suspended or restricted. Hotels, restaurants and retailers, already suffering from the COVID-19 pandemic, have been forced to close their doors. Landlords—commercial and residential—may face rent abatement claims. Manufacturers, also strained by the pandemic,

have lost production. Travel has been limited. The loss of electricity and heat necessitating these closures and interruptions is among the risks insured by many commercial property policies, and corporate insureds should carefully review terms to identify what resulting business income loss may be recoverable.

- **Flood.** Adding insult to injury, many residential and commercial property owners have not only suffered loss of heat and power, but have experienced burst pipes, sprinklers and/or related flooding. Here, again, individual policy terms may vary in how “flood” is defined and covered. Given the potential costs involved in remediating flood damage (in the midst of a winter storm), corporate policyholders should also explore the potential for flood coverage as circumstances warrant.

Other sublimited coverage grants for debris removal or expediting expenses may be implicated for policyholders, who have experienced flooding from frozen pipes or other storm-related property damage.

- **Extra Expense & Preservation of Property.** “Extra expense” coverage extends to reasonable and necessary costs and expenses incurred to resume or continue normal business operations that would otherwise be reduced or suspended by loss or damage to insured property. Related coverage may exist for expenses incurred to reduce otherwise covered business interruption loss.

Similar to extra expense coverage, many policies provide separate limits available for reasonable and necessary costs incurred by the insured to protect or preserve covered property from imminent physical loss or damage.

Businesses coping with loss or damage from winter storms may incur additional costs for payroll, heat, travel or a host of other expenses either to continue normal operations or prevent more extreme loss of property or income. Risk managers and corporate counsel should consider whether such expenses are recoverable.

- **Contingent/Dependent Property Business Interruption Coverage.** This coverage insures the policyholder’s loss of income resulting from covered loss or damage to property—not owned by the insured—but property of others, on whom the insured’s business depends. If an insurer’s client or vendor is unable to purchase or supply product because of weather-related service interruption, the ensuing loss of income to the dependent policyholder may be insured, subject to applicable limits, exclusions and deductibles.

Even for those businesses not directly impacted by this week’s winter storms, if supply lines are impaired or if clients are unable to operate or transact business due to extreme weather conditions or loss of utilities, the resulting business interruption to insureds may be compensable.

- **Transit Coverage.** Some policies insure against covered physical loss or damage to property while in transit—both in terms of the owner’s loss and the liability to the common carrier.

Thousands of flights have been cancelled over the past week due to extraordinary weather. Thousands of miles of road have been rendered impassable from ice and snow. To the extent that inventory or other property has been lost or damaged in transit because of extreme

winter conditions, this damage may also be recoverable under traditional commercial property coverage.

Individual policies may include any number of other coverage grants that could also apply to some form of loss or damage arising out of the past week of historic weather in Texas and surrounding states. After days of extreme temperatures, snow and power outages, the cost in terms of human suffering and the loss to business is nothing less than extraordinary. To ensure that this loss is mitigated, corporate policyholders should carefully consider the insurance coverage available to compensate for property damage and business interruption.

If you have questions about coverage for weather-related loss or damage or about insurance recovery in general, please contact one of Haynes Boone's [Insurance Coverage Practice Group](#) partners listed below.

Note: This alert was republished as an ["Expert Analysis" article](#) in Law360.