Contingent Business Interruption Coverage: Insuring The Far-Reaching Effects Of Tropical Storm Harvey

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Manufacturers and producers are keenly aware of the value provided by business interruption coverage. Typically, this coverage is sold to companies as one of several coverages under their commercial property insurance package. Business interruption coverage is generally triggered by physical damage to a company asset (e.g., a manufacturing plant), which causes a suspension of business activities resulting in a loss of business income. Tropical Storm Harvey has forced manufacturers and producers across Southeastern Texas to shut down operations while repairing their damaged facilities. These companies will turn to their business interruption carriers to recoup their business income lost during this period. However, for companies doing business in that region, but physically located outside the reach of Harvey, business interruption coverage may not protect them from lost profits caused by the storm. For example, say a company owns a manufacturing facility in California where it assembles cars. The manufacturer purchases its engines from a company located in the flood-ravaged portions of Texas. If the Texas company is unable to build and deliver engines to California, the manufacturer might be unable to assemble cars for days, possibly weeks. Any business income losses incurred by the California company are unlikely to trigger standard business interruption coverage because the California manufacturing facility did not suffer any physical damage. To fill the gap, manufacturers and producers often purchase contingent business interruption coverage (CBI). CBI coverage is, in effect, an extension of business interruption coverage to the business activities of suppliers and customers. If an upstream supplier or downstream customer suffers an interruption in business activities, CBI coverage should kick in to reimburse the policyholder for certain lost profits. CBI coverage can be written on specific properties owned by suppliers or customers and/or on a blanket basis. The value of CBI coverage may vary depending on the precise language of the coverage grant. Compare *Millennium Inorganic Chems. Ltd. v. National Union Fire Ins. Co.*, 744 F.3d 279, 285-86 (4th Cir. 2014) (CBI coverage was expressly limited to “direct contributing properties” therefore, the presence of an intermediary between policyholder and supplier precluded coverage) to *Archer-Daniels-Midland v. Phoneix Assur. Co.*, 936 F. Supp. 534, 544 (S.D. Ill. 1996) (CBI coverage was not limited to “direct suppliers,” therefore, CBI coverage was appropriate despite an intermediary in the supply chain). There are a myriad of issues that arise when a company tenders a claim for CBI coverage, all of which need to be carefully considered on a case-by-case basis. For manufacturers and producers that rely on companies in Southeastern Texas, CBI coverage may become vital.