

Business Income Insurance Coverage

By Robert J. Brennan and Laura C. Conway

Business interruption insurance is an essential component of any corporation's insurance coverage program. As illustrated in the recent attacks on the World Trade Center, damage to physical property that interrupts a company's operations can have devastating effects on the company's income and ability to fund payroll, production and other continuing expenses. Accordingly, most commercial property insurance policies include coverage for losses resulting from the interruption of the insured's business operations. This article provides an overview of business interruption and extra expense coverage, as well as a discussion of the relevant case law.

Basics of Business Interruption and Extra Expense Coverage

Business interruption (formerly known as "use and occupancy insurance")¹ and extra expense coverage are intended to permit the insured to resume its normal business operations as quickly as possible. Available coverage includes reimbursement for loss of income and payment of fixed and continuing expenses.² Nevertheless, the case law is clear that the purpose of these provisions is *not* to put the insured in a better position than prior to its loss.³

Business interruption and extra expense coverage is generally part of a commercial property insurance policy, either within the body of the policy or attached as an endorsement.

Business Interruption Coverage

While all policy forms differ, generally most business interruption provisions contain the following elements:

- actual physical loss that is specifically covered by the policy
- to covered property
- causing
- actual interruption in business operations and
- actual loss of income.

Business interruption insurance reimburses lost income and payment of fixed and continuing expenses. The following is a typical business interruption coverage provision:

f. 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 described premises, including personal property in the open (or in a vehicle) within 1,000 feet, caused by or resulting from any Covered Cause of Loss.

We will only pay for loss of Business Income that occurs within 12 consecutive months after the date of direct physical loss or damage.

- (2) Your loss of Business Income is covered up to 30 consecutive days when caused as a direct result of damage, by a Covered Cause of Loss, to property adjacent to your premises.

Business Income means the:

- (1) Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
- (2) Continuing normal operating expenses incurred, including payroll.⁴

Extra Expense Coverage

Each of the companies located in the World Trade Center that needed to continue operations was forced to set up alternate offices or make use of satellite offices in order to do so. Such efforts create substantial costs for additional rent, setup, transportation and related expenses. The purpose of extra expense coverage is to compensate the policyholder for these incremental expenses, which it would not have incurred but for the need to continue operations elsewhere.⁵ Such extra expenses are distinct from the fixed and continuing costs covered by the business interruption provision of the policy.⁶ In *Eastern Assoc. Coal Corp. v. Aetna Cas. & Surety Co.*,⁷ "the court held that a policyholder may not recover for the "extra" expenses in the absence of a specific provision in its policy that allows such recovery."⁸

The following is a typical extra expense coverage provision:

g. Extra expense

We will pay necessary Extra Expense you incur during the “period of restoration” that you would not have incurred if there had been no direct physical loss or damage to property at the described premises, including personal property in the open (or in a vehicle) within 1,000 feet, caused by or resulting from a Covered Cause of Loss.

Extra Expense means the expense incurred:

- (1) To avoid or minimize the suspension of business and to continue “operations”:
 - (a) At the described premises; or
 - (b) At replacement premises or at temporary locations, including:
 - (i) Relocation expenses; and
 - (ii) Costs to equip and operate the replacement or temporary locations.
- (2) To minimize the suspension of business if you cannot continue “operations”.
- (3)
 - (a) To repair or replace any property; or
 - (b) To research, replace or restore the lost information on damaged valuable papers and records; to the extent it reduces the amount of loss that otherwise would have been payable under this Additional Coverage or Additional Coverage

f. Business Income

We will only pay for Extra Expense that occurs within 12 consecutive months after the date of direct physical loss or damage.

This Additional Coverage is not subject to the Limits of Insurance.⁸

Insurable Interest in Business Operations

A claimant seeking business interruption coverage must have an insurable interest in the business in question. Merely possessing an interest in the property, such as that possessed by a mortgagee, is insufficient to create an insurable interest in the business for which coverage is sought.⁹

Construction of Business Interruption and Extra Expense Provisions

The usual rules of construction governing insurance policies in general apply to construction of business interruption and extra expense provisions¹⁰—that is, policy exclusions and ambiguities are strictly construed against the insurer.¹¹ In addition, the policy

language must be given the meaning that a person of ordinary intelligence would give to it.¹²

Obligations of Policyholder

Business interruption and extra expense provisions generally contain specific notice and proof of loss provisions.¹³ Some courts have concluded that an insurer may waive the notice provision in its policy based on its course of conduct with the policyholder. For example, in *Bowersox Truck Sales and Service, Inc. v. Harco Nat'l Ins.*,¹⁴ the Court of Appeals for the Third Circuit reversed the U.S. District Court for the District of New Jersey's dismissal of a claim for coverage under a business interruption policy. The Third Circuit held that the two-year limitations period set forth in the policy did not apply based, in part, on the insurer's conduct.¹⁵

Ice and snow caused a portion of Bowersox's building to collapse in March 1994. Bowersox attempted to shore up the building and then made claims under the business interruption provision of its commercial property insurance policy with Harco, as well as under the property damage provisions of the policy. The policy required that all claims for business interruption coverage be brought within two years of the date of the physical loss or damage. In August 1995, the parties settled all of Bowersox's claims except for business interruption, which the parties expressly reserved.¹⁶

Meanwhile, Bowersox and Harco exchanged correspondence regarding the business interruption claim. On several occasions, Harco requested additional information in support of Bowersox's claim. Harco also advised that it would address Bowersox's business interruption claim upon completion of reconstruction of the building.¹⁷ This reconstruction was not completed until January 1997, over two years after the initial damage to the building. As late as March 1997, Harco requested additional information in support of the claim. Because Harco had not paid business interruption benefits under the policy, Bowersox filed suit in December 1997. For the first time, Harco raised as a defense in this action the two-year limitations period.¹⁸

The Third Circuit reversed the district court's order granting summary judgment in favor of Harco. The Third Circuit reasoned that Harco's interpretation would preclude coverage for any business interruption claims under the policy in which the reconstruction was not completed within a two-year period.¹⁹ In addition, the parties' course of dealing militated against application of the two-year limitations period. Harco made repeated requests for addi-

tional information during and after the two-year limitations period. As such, according to the court, Bowersox had no reason to believe that the “two-year clock was ticking.”²⁰ Therefore, the court held that the two-year limitations period did not apply to Bowersox’s business coverage claim.²¹

Covered Loss

An insured cannot recover for a loss under its business interruption or extra expense provisions unless the triggering loss is specifically covered by the policy. Often, the definition of a covered loss for purposes of business interruption or extra expense coverage is the same as that for property damage. As with any general rule, there are exceptions to this rule.²²

Courts have concluded that the following losses are covered under the policies in question: fire; explosions; power failures; earthquakes; closure by order of civil authority; accidental injury to machinery or equipment; hail; floods; riots and civil commotions.²³ At the same time, other courts have affirmed exclusions for losses caused by design defects; loss of a lease, license or contract; fire; flood; theft; false pretense; water damage and power failures.²⁴ The specific language of the policy controls what constitutes a “covered loss.”²⁵

While business interruption and extra expense coverage is not intended to reimburse the insured for physical damage to property, such physical damage or loss of use is nevertheless required to trigger standard business interruption and extra expense coverage.²⁶ *Port Murray Dairy Co. v. Providence Washington Ins. Co.*²⁷ (no coverage for business interruption or extra expense allowed where insured’s property did not sustain physical damage); *Howard Stores Corp. v. Foremost Ins. Co.*²⁸ (insured was not entitled to business interruption coverage because its covered property suffered no physical damage). One exception to this rule is closure of the covered property by order of civil authority.²⁹ Such orders arise in situations involving riots or other civil commotions, as well as floods and other natural disasters.

In recognition of the ever-increasing dependence on computer systems and their use in business operations, a New York court held that the insured was entitled to business interruption coverage following interruption in the operation of its data processing equipment. In *Datab, Inc. v. St. Paul Fire & Marine Ins. Co.*,³⁰ the U.S. District Court for the Southern District of New York permitted recovery for business interruption losses under a policy covering the insured’s data processing systems. While the insured’s computers were not physically damaged, the insured was forced to shut them down as the result of a water

main break, which rendered the insured’s air conditioning system inoperative. The court concluded that the damage caused by the water main break, although it did not occur in the part of the building occupied by the insured, constituted the requisite physical damage for coverage purposes.³¹

Similarly, a court recently concluded that a loss of computer data constituted a “physical loss” for purposes of triggering business interruption coverage. In the bellwether *American Guarantee & Liab. Ins. Co. v. Ingram Micro, Inc.*, the U.S. District Court for the District of Arizona concluded that loss of data and interruption of computer service constituted a “physical loss” for purposes of Ingram Micro’s business interruption coverage.³² American Guarantee contended that a computer that had lost data was not physically damaged as long as it was capable of storing data and performing its other customary functions. The court rejected American Guarantee’s narrower definition of physical damage in this context.³³ The court did not settle the question of whether mere interruption of service, without loss of data, constituted “physical loss or damage” for purposes of triggering coverage. The case was eventually settled after the Ninth Circuit refused to hear an interlocutory appeal. Although *Ingram Micro* may be persuasive, it is not binding authority.³⁴ Nevertheless, the language of the opinion provides support for an insured seeking coverage for losses following failure of computer systems.

Covered Property

Generally, a policyholder may recover for loss of income caused by physical damage to the property specifically identified in the policy. Where the physical damage occurs at a location that is interrelated with the covered property, the insured may nevertheless be entitled to business interruption or extra expense coverage.³⁵ The insured must demonstrate the interdependence of the covered and noncovered properties in order to obtain coverage.

In *Howard Stores*,³⁶ the Supreme Court of New York, Appellate Division, First Department, denied the insured’s claim for loss of business income based on water damage at a retail store affiliated with the insured, a clothing manufacturer. The insured contended that, although the store where the damage occurred did not actually suspend operations, the company nevertheless lost business as the result of its need to divert inventory from other stores to the store that sustained water damage. The court held that the loss of income at the insured’s other stores, as well as the store that suffered damage, was not

covered under the business interruption policy, as the insured failed to demonstrate that the properties were sufficiently interrelated.³⁷

Similarly, in *Protection Mut. Ins. Co. v. Mitsubishi Silicon Am. Corp.*,³⁸ the Court of Appeals of Oregon held that the policyholder was not entitled to business interruption benefits for losses resulting from failure of utility service. The policyholder claimed that damage to an unrelated utility plant caused it to suffer an interruption of business. The court reversed the trial court's decision and directed the judgment be entered in favor of the insurer. Under the terms of the policy, the court concluded, only losses caused by physical damage to the insured's premises were covered.³⁹

Causation

The insured bears the burden of proving that the physical loss in question actually caused the claimed loss of income.⁴⁰ Losses attributable to poor performance prior to the physical damage and lack of demand for the insured's product, for example, are not recoverable under business interruption and extra expense provisions.⁴¹

Likewise, a loss that is not caused directly by physical damage to the insured's property is not covered by business interruption or extra expense provisions.⁴²

In *Port Murray Dairy*,⁴³ the Superior Court of New Jersey, Chancery Division, denied the policyholder's claim for business interruption and extra expense benefits. The court reasoned that the cause of the interruption of the policyholder's business operations was a dairy farmer strike that blocked access to the policyholder's dairy. This strike damaged neither the policyholder's building nor its milk products. The policyholder contended that the blockade prevented it from selling its milk products. As a result, the milk spoiled and was unusable. The court disagreed and concluded that the policyholder was not entitled to business interruption or extra expense coverage.⁴⁴

Actual Suspension of Operations

Total suspension of business operations is generally required to trigger business interruption or extra expense coverage. *American States Ins. Co. v. Creative Walking, Inc.*⁴⁵ Some policies provide that partial suspension is sufficient, although the recovery available is diminished to account for the partial suspension.⁴⁶ *Lite v. Firemen's Ins. Co.*⁴⁷ (insured was permitted to recover for loss of rents caused by partial destruction of commercial and residential building complex).

Even if an insured suffers a loss of income, some courts have held, it may not recover in the absence of an actual interruption of all or part of its opera-

tions.⁴⁸ For example, in *National Children's Expo.*,⁴⁹ the Court of Appeals for the Second Circuit held that the insured was not entitled to recover for the decreased income from its children's exposition. The insured claimed that its decreased receipts were caused by a snowstorm, a covered peril, because the snowstorm prevented several persons from attending the exposition. The Second Circuit rejected this argument, holding that the insured could not recover because the snowstorm neither damaged the building in which the exposition was covered nor prevented the insured from conducting the exposition. Because there was no partial or total suspension of operations, the insured was not entitled to business interruption coverage, the court concluded.⁵⁰

Actual Loss of Income

As a general rule, policyholders must demonstrate an actual loss of income as the result of the suspension of operations.⁵¹ In *Fold-Pak Corp. v. Liberty Mut. Fire Ins. Co.*,⁵² the U.S. District Court for the Western District of New York denied the policyholder's claim for business interruption coverage because the insured had suffered no loss of income. The policyholder, Fold-Pak, suffered a fire at its manufacturing plant, where Fold-Pak manufactured cardboard pails typically used for Chinese take-out food. The fire destroyed Fold-Pak's primary machine for manufacturing pails. Fold-Pak was forced to use a more expensive manufacturing process. While Fold-Pak's output with this method did not meet its manufacturing projections, Fold-Pak was able to satisfy each of the orders for its pails. Accordingly, the court concluded, Fold-Pak had suffered no loss of income as the result of the destruction of its machine.⁵³

The insured's books, records and earnings projections provide support for its claim of loss of income.⁵⁴ *American Med. Imaging Corp. v. St. Paul Fire & Marine Ins. Co.*⁵⁵ (insured may establish loss of income based on earnings projections); *Compagnie Des Bauxites de Guinea v. Insurance Co. of North Am.*⁵⁶ (business interruption losses were properly based on the value of the shipping orders canceled as the result of a damage to the insured's manufacturing plant).

Where the parties disagree on the amount of the loss, they may appoint an appraiser. The appraiser's determination may be binding on the parties.⁵⁷

An insured is obligated to mitigate its losses by resuming operations as quickly as possible, relying on inventory and setting up alternate bases of operations.⁵⁸ *American Med. Imaging.*⁵⁹

In *Pennbar Corp. v. Insurance Co. of North Am.*,⁶⁰ the Court of Appeals for the Third Circuit held that

the policyholder was not entitled to coverage under its business interruption policy because it had failed to suffer any loss of income. The policyholder, Pennbarr, was in the business of selling typewriters that were manufactured in Europe. Two earthquakes suspended operations at one of Pennbarr's European factories. Pennbarr used inventory and alternate sources for purchase of the typewriters to meet its needs. The court concluded that Pennbarr was obligated to do so under the terms of its business interruption policy. Because these alternatives permitted Pennbarr to meet its sales needs immediately following the earthquakes, Pennbarr suffered no loss of income and, thus, was not entitled to business interruption coverage.⁶¹

In "valued" or "value" policies, the amount of a business interruption loss is agreed upon by the parties in advance and usually set forth in the policy. In "open" policies, which are more common, the insured bears the burden of proving the actual amount of loss caused by the suspension of operations.⁶² Policyholders must prove a loss of income regardless of whether the policy in question is valued or open.

In *Sebro Packaging Corp. v. Liberty Mut. Ins. Co.*, the court rejected an insured's contention that it need not demonstrate that an actual interruption of business occurred in order to obtain coverage under its business interruption policy.⁶³ Liberty Mutual Insurance Company issued a value business interruption policy to Sebro Packaging. During the policy period in question, several accidents damaged Sebro's machines, which were covered under the Liberty Mutual policy. Sebro asserted that coverage was triggered by an accident on a covered machine. Because it had purchased a value policy, Sebro contended it need not demonstrate actual loss, i.e., interruption of its business, to recover.⁶⁴

Liberty Mutual disputed Sebro's position, contending that the policyholder must demonstrate an actual loss of gross income as the result of the accidents to the covered machines. Liberty Mutual asserted that, although in a value policy the parties stipulate to the amount of loss, this did not obviate Sebro's obligation to show that it had suffered a loss.⁶⁵

The court agreed with Liberty Mutual's position, holding that the insurance policy clearly provided that coverage was triggered only when an accident to a covered machine caused an actual loss to Sebro.⁶⁶

Types of Recovery Available

An insured may recover for loss of income and payment of fixed and continuing expenses under its business interruption policy. "Fixed and continuing expenses" include payroll expenses for key person-

nel; interest on a business loan; rental obligations for which the lessee remains liable during the period of interruption; taxes; insurance; licenses and utilities.⁶⁷

Expenses that are "noncontinuing" fall outside the scope of business interruption coverage—that is, an expense that the insured is not obligated to pay due to the cessation of operations is not covered by the business interruption provision.⁶⁸ Such expenses may include payroll for employees who were necessary to keep the insured's operations running, at least in part; payroll for employees whom the insured transferred to other departments during the interruption of the employees' ordinary business; and labor costs for which the insured recovered under its property insurance policy.⁶⁹ *Maple Leaf Motor Lodge, Inc. v. Allstate Ins. Co.*⁷⁰ (payroll, payroll taxes and entertainment expenses were noncontinuing expenses and, thus, not recoverable under the insured's business interruption policy).

As discussed above, extra expense coverage is intended to cover for expenses for those costs associated with resumption of operations, incurred in addition to the insured's continuing and fixed expenses. In *Fold-Pak, supra*, the court held that the insured was entitled to recover for extra expenses.⁷¹ A fire destroyed the insured's manufacturing process, forcing it to utilize a more expensive process. The court allowed recovery for those expenses directly attributable to the use of a more expensive production process, but denied the insured's claim for coverage for depreciation of its building, insurance and salaries. The court concluded that these latter charge represented fixed and continuing expenses that were not within the scope of the insured's extra expense coverage.⁷²

Recovery Period

Many business interruption and extra expense provisions include a specific "period of restoration," or time period during which the insured may receive business interruption or extra expense benefits.⁷³ (policy provided for 12 months of coverage). Policies that do not provide an explicit time period often state that the insured's liability is limited to the period in which the insured can rebuild, repair or replace the destroyed property through the "exercise of due diligence and dispatch."⁷⁴ What constitutes a reasonable period of restoration is generally a question of fact.⁷⁵ See, e.g., *Fountain Powerboat Indus. Inc. v. Reliance Ins. Co.*⁷⁶ Depending on the language of the policy, the policyholder may be entitled to business interruption coverage beyond the expiration date of the policy.⁷⁷

In *Anchor Toy Corp. v. American Eagle Fire Ins.*

Co.,⁷⁸ the Supreme Court of New York concluded that 48 weeks was a reasonable period of time within which the policyholder could rebuild its factory, which was destroyed by a fire. Therefore, the policyholder was entitled to 48 weeks of business interruption coverage, notwithstanding that the policyholder had not and did not intend to rebuild its factory.⁷⁹

The court's decision in *Anchor Toy* is consistent with the decisions of other courts, which have held that an insured that chooses not to return to its business may be permitted to recover under the policy. To do so, the insured must demonstrate the amount of time it would have taken to restore the business.⁸⁰

Often, the insurer's failure to timely adjust the loss hinders the policyholder's efforts to continue its operations. The courts have held that delay by the insurer in adjusting the claim may extend the period of restoration.⁸¹ The insured must have satisfied its obligations under the policy in order for the insurer's delay to extend the period of restoration.⁸²

Conclusion

As the World Trade Center attacks have illustrated, merely reimbursing an insured for the value of its property is often wholly inadequate. Reimbursement for loss of income, payment of continuing expenses and reimbursement of extra expenses is critical to the survival of policyholders under commercial property policies. Knowledge of the basics of business interruption and extra expense coverage will assist clients with recovery from the devastation of the World Trade Center attacks, as well as other causes of interruption to their business. ■

Notes

1. 37 A.L.R.5th 41 (2001).
2. *Id.*
3. *Id.* at § 3a.
4. CNA Businessowners Special Property Coverage Form G-19340-B (May 1995). Copyright CNA. Copies available upon request.
5. 37 A.L.R.5th 41, §§ 39, 43f; APPLEMAN, INSURANCE LAW AND PRACTICE, § 3121.25, p. 432 (1970) [hereinafter APPLEMAN].
6. 37 A.L.R.5th 41, § 39.
7. 632 F.2d 1068 (3d Cir. 1980), *cert. denied*, 451 U.S. 986 (1981).
8. CNA Businessowners Special Property Coverage Form G-19340-B (May 1995). Copyright CNA.
9. *Citizens Savings & Loan Ass'n v. Proprietors Ins. Co.*, 78 A.D.2d 377, 380, 435 N.Y.S.2d 303, 306 (N.Y. App. Div. 2d Dep't 1981).
10. 37 A.L.R.5th 41, §§ 2a, 7.
11. *Id.*
12. *Id.*
13. *Id.* at § 2a.
14. 209 F.3d 273 (3d Cir. 2000).
15. *Id.* at 278.
16. *Id.* at 274-75.
17. *Id.* at 276.
18. *Id.* at 277.
19. *Id.* at 278.
20. *Id.* at 278-79.
21. *Id.* at 279.
22. 37 A.L.R.5th 41, § 25; APPLEMAN, INSURANCE LAW AND PRACTICE § 3120, pp. 121, 128 (2001) [hereinafter APPLEMAN].
23. 37 A.L.R.5th 41, § 22.
24. *Id.* at § 25.
25. *Id.* at § 22.
26. *Id.* at § 16.
27. 145 A.2d 504, 52 N.J. Super. 350 (N.J. Sup. Ct. Ch. Div. 1958).
28. 82 A.D.2d 398, 441 N.Y.S.2d 674, *aff'd*, 56 N.Y.2d 991, 453 N.Y.S.2d 682 (N.Y. App. Div. 1st Dep't 1981).
29. 37 A.L.R.5th 41, § 17.
30. 347 F. Supp. 36 (S.D.N.Y. 1972).
31. *Id.* at 38.
32. 2000 U.S. Dist. LEXIS 7299, at *6 (D. Ariz. April 19, 2000).
33. *Id.* at *5.
34. Catherine L. Rivard and Michael A. Rossi, *Is Computer Data "Tangible Property" or Subject to "Physical Loss or Damage"?*, at www.irmi.com (August 2001).
35. 37 A.L.R.5th 41, §§ 15b, 18a.
36. 82 A.D.2d 398, 441 N.Y.S.2d 674.
37. *Id.* at 401-02, 441 N.Y.S.2d at 676-77.
38. 992 P.2d 479, 485-86 (Or. Ct. App. 1999).
39. *Id.*
40. 37 A.L.R.5th 41, § 27.
41. *Id.* at § 2a.
42. *See, e.g.*, *Howard Stores*, *supra* note 29, 82 A.D.2d at 401, 441 N.Y.S.2d at 676 (insured's business interruption claim denied based, in part, on insured's failure to demonstrate that damage to physical property caused insured's income loss); *National Children's Expo. Corp. v. Anchor Ins. Co.*, 279 F.2d 428 (insured was not entitled to recovery where covered peril did not cause loss of use of the covered property).
43. 145 A.2d 504, 52 N.J. Super. 350.
44. 52 N.J. Super. at 356-57.
45. 16 F. Supp. 2d 1062, 1065 (E.D. Mo. 1998).

See also 37 A.L.R.5th 41, § 2a.

46. *Id.* at § 19.
47. 119 A.D.2d 410, 104 N.Y.S.2d 434 (N.Y. App. Div. 1st Dep't 1907), *aff'd*, 193 N.Y. 639 (N.Y. 1908).
48. APPLEMAN, *supra* note 5, § 2329, p. 325.
49. 279 F.2d 428.
50. *Id.* at 431.
51. 37 A.L.R.5th 41, §§ 12, 30.
52. 784 F. Supp. 49, 54 (W.D.N.Y. 1992).
53. *Id.*
54. 37 A.L.R.5th 41, §§ 32e, 32f.
55. 949 F.2d 690, 694 (3d Cir. 1991).
56. 794 F.2d 871 (3d Cir. 1986).
57. Jupiter Aluminum Corp. v. Home Ins. Co., 225 F.3d 868, 872 (7th Cir. 2000).
58. 37 A.L.R.5th 41, §§ 20, 34.
59. 949 F.2d at 692.
60. 976 F.2d 145 (3d Cir. 1992).
61. *Id.* at 155.
62. 37 A.L.R.5th 41, § 4.
63. 69 F. Supp. 2d 642 (D.N.J. 1999).
64. *Id.* at 643.
65. *Id.* at 644.
66. *Id.* at 644-45.
67. 37 A.L.R.5th 41, §§ 2a, 36a; APPLEMAN, *supra* note 5, § 3120, p. 423; APPELMAN, *supra* note 22, § 3120, p. 126.
68. 37 A.L.R.5th 41, § 37.

69. *Id.* at § 36a.
70. 53 A.D.2d 1045, 1046, 386 N.Y.S.2d 162, 163 (N.Y. App. Div. 4th Dep't 1976).
71. 784 F. Supp. at 56.
72. *Id.* at 55-56.
73. See, e.g., High Country Arts & Crafts Guild v. Hartford Fire Ins. Co., 126 F.3d 629 (4th Cir. 1997).
74. 37 A.L.R.5th 41, § 46.
75. *Id.*
76. 119 F. Supp. 2d 552, 558 (E.D. N.C. 2000).
77. Archer-Daniels-Midland Co. v. Phoenix Assurance Co., 975 F. Supp. 1124, 1129 (S.D. Ill. 1997).
78. 4 Misc.2d 364, 368, 155 N.Y.S.2d 600, 604 (N.Y. Sup. Ct. New York Cty. 1956).
79. *Id.* at 366, 368, 155 N.Y.S.2d at 603, 604.
80. APPLEMAN, *supra* note 23, § 3120, p. 120.
81. 37 A.L.R. 5th 41, § 51b; APPLEMAN, *supra* note 22, § 3120, p. 120.
82. See *Lancellotti v. Maryland Cas. Co.*, 617 A.2d 296, 260 N.J. Super. 579 (N.J. Sup. Ct. App. Div. 1992) (insured not entitled to business interruption coverage because he had not submitted sufficient proof of loss).

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