

A photograph of two hikers in red jackets and black pants climbing a large, dark rock peak. One hiker is on top of the rock, leaning forward to help the other hiker who is climbing up the side. The background shows a range of snow-capped mountains under a blue sky with white clouds. Two vertical red bars are positioned on the left side of the image, one at the top and one at the bottom.

CONTINGENT BUSINESS INTERRUPTION (“CBI”): WHAT BUSINESSES NEED TO KNOW

June 11, 2015

WELCOME!

WITH YOU TODAY



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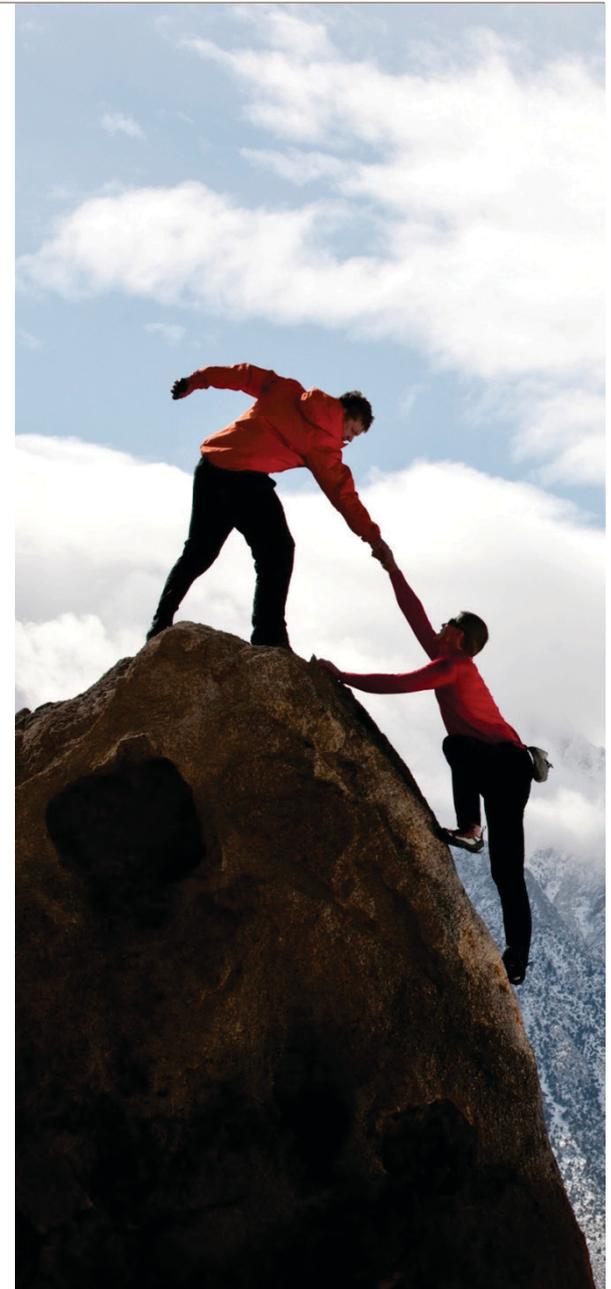


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WELCOME!

SESSION AGENDA

- Preparing for the unforeseeable
- Why is contingent business interruption coverage so important
- Typical policy language
- Learning through case snippets
- Exclusions and deductibles
- Wide area impact
- Evidentiary support and decision making
- Q&A



PREPARING FOR THE UNFORESEEABLE

UNCERTAINTY IS THE ONLY CERTAINTY THERE IS



You can have the most comprehensive insurance policy...

AND



A best-in-class Risk Management function...

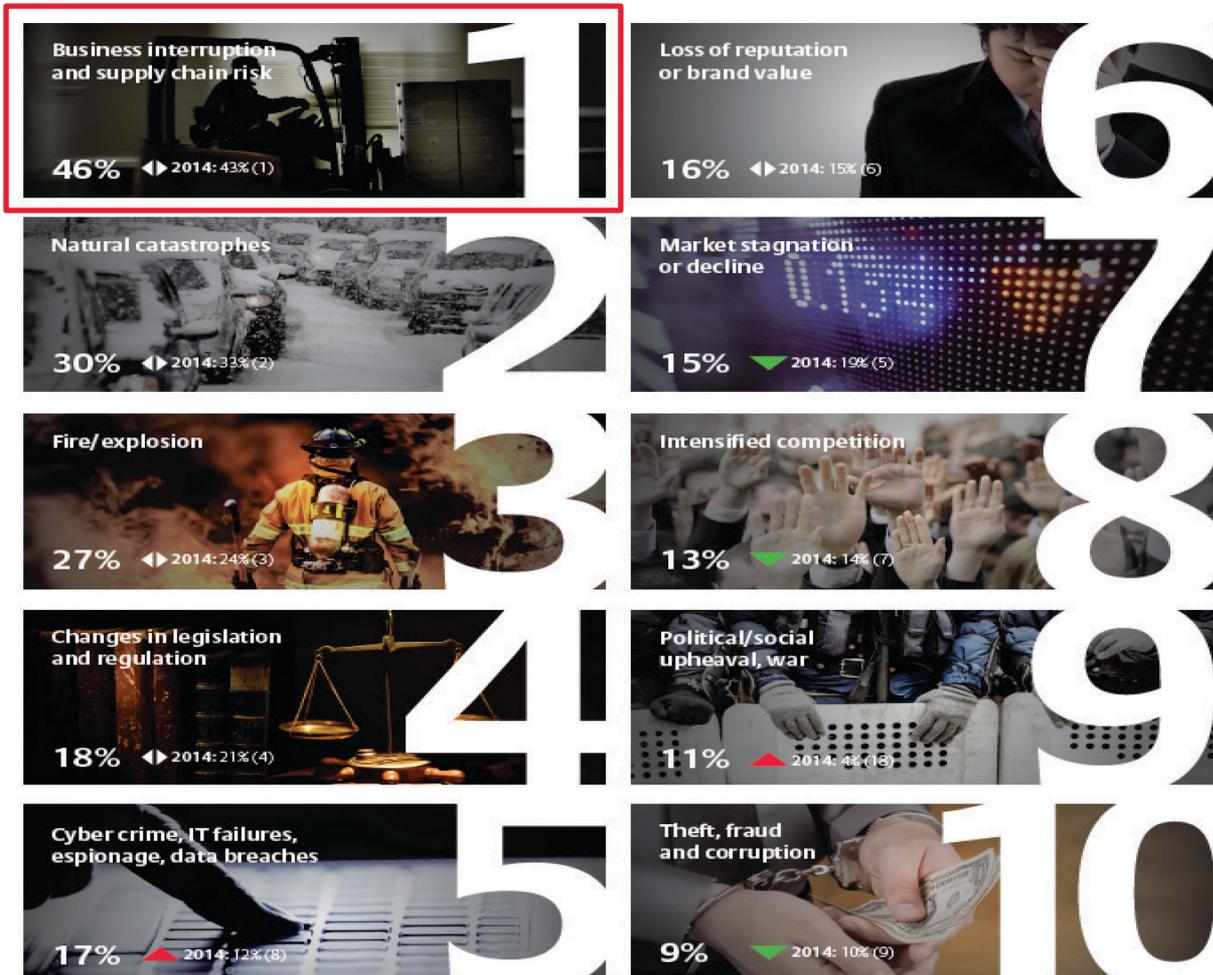
BUT



There will always be catastrophic events around the world which are completely out of your control.

CONTINGENT BUSINESS INTERRUPTION COVERAGE

TOP 10 GLOBAL BUSINESS RISKS FOR 2015

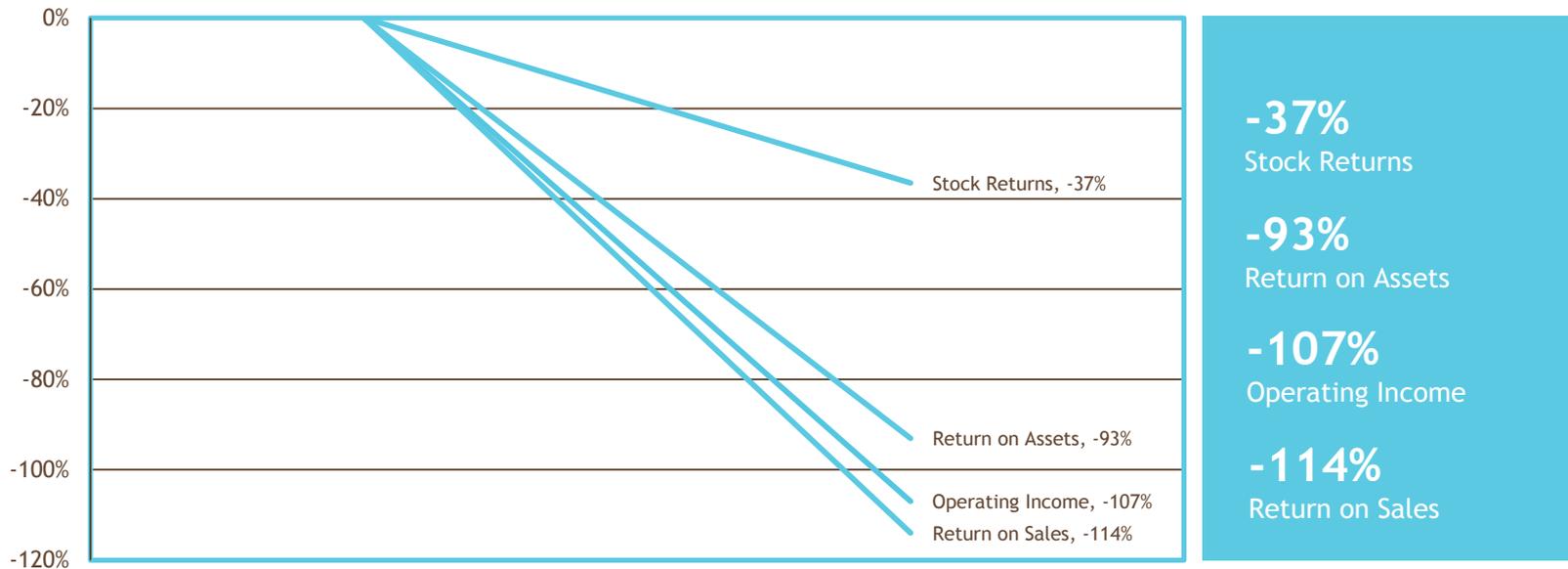


To see full Risk Barometer 2015 rankings click here [↗](#)

Source: Allianz Global Corporate & Specialty. For methodology, see page 3

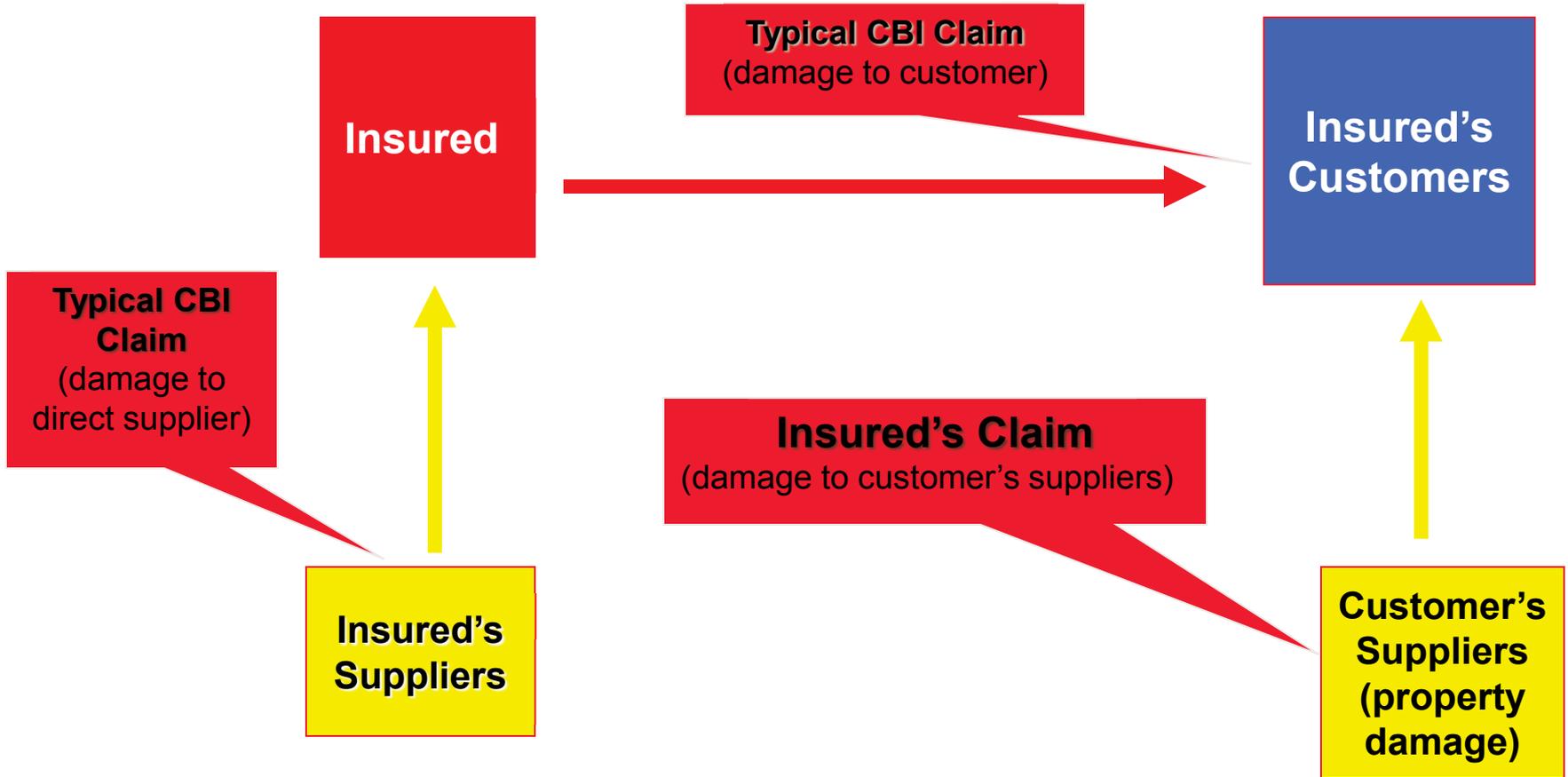
CONTINGENT BUSINESS INTERRUPTION COVERAGE

IMPACT ON YOUR BUSINESS



Source: *The Effect of Supply Chain Disruptions on Long-term Shareholder Value, Profitability, and Share Price Volatility* - by Kevin Hendricks (The University of Western Ontario) & Vinod Singhal (Georgia Institute of Technology)

CONTINGENT BUSINESS INTERRUPTION



CONTINGENT BUSINESS INTERRUPTION COVERAGE

REPRESENTATIVE EXAMPLES

- Thailand Floods – Hard Drive Shortage
- Japan Earthquake – Paint Pigments
- Germany – Fuel Tanks
- Grenada – Nutmeg
- Europe – Polypropylene Shortage



Source: NY Times

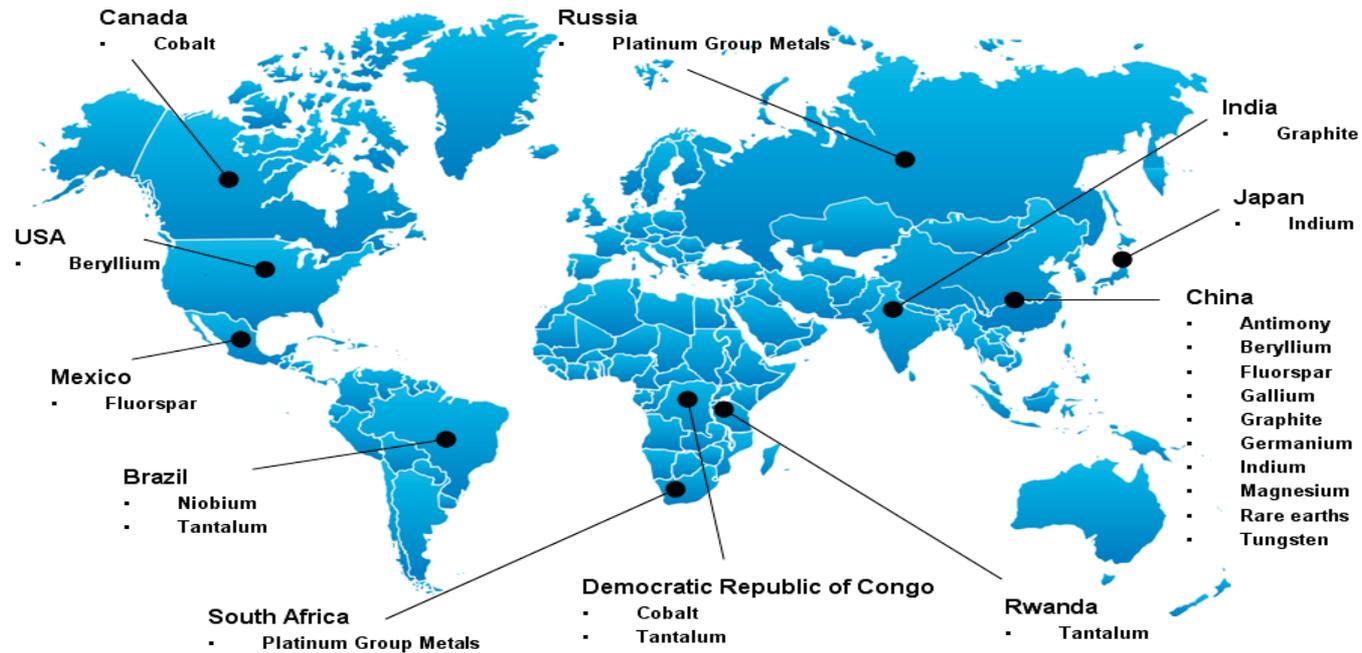


Source: Getty Images

CONTINGENT BUSINESS INTERRUPTION COVERAGE

REPRESENTATIVE EXAMPLES

Production concentration of critical raw mineral materials



Source: European Commission (http://ec.europa.eu/index_en.htm)

LEARNING THROUGH CASE SNIPPETS

REPRESENTATIVE EXAMPLES

- **Flooding of Electronic Components Facility - Thailand**
 - Company had done extensive Supply Chain study and identified risk areas; had 3 qualified suppliers for a critical part; all 3 suppliers were based on the river delta in Thailand
- **Railroad Collapse - Texas**
 - Company had an exclusion for bridges and railroads in policy
- **Bauxite Mine- Jamaica**
 - Loading crane had mechanical breakdown; unable to load ships to get product to US for Alumina production; dozens of plants impacted
- **Contract Pharmaceutical Plant - US**
 - Fire caused facility down for 14 months
 - Company decided to make upgrades and change design
 - FDA approval process - covered or not covered?

WHEN TO BUY CBI COVERAGE

- Insured depends on a single supplier or a few supplier for materials
- Business depends on one or a few manufacturers or suppliers for most of its merchandise
- Limited number of businesses buy insured's products
- Adjacent business (leader property) attracts a high percentage of the insured's customers (e.g. Hotel next to Disneyworld)

THE NATURE OF CONTINGENT COVERAGE

- “Contingent” losses are losses that stem from damage to property not owned, operated or controlled by the insured.
 - *Cll Carbon, L.L.C. v. Nat'l Union Fire Ins. Co. of La., Inc.*, 918 So. 2d 1060, 1069 (La.App. 4 Cir. Aug. 17, 2005)
- **Most contingent coverages are designed to protect an insured when suppliers, customers or property on which an insured may depend suffer damage or are prevented from delivering or receiving goods and/or services**
- **Not all contingent coverages require damage to property. Some merely require loss caused by an insured peril or in the case of all-risk policies, a non-excluded peril.**
 - *Fountain Powerboat Indus. v. Reliance Ins. Co.*, 119 F. Supp. 2d 552 (E.D. N.C. 2000) (policy that covered “the necessary interruption or reduction of business operations conducted by the insured and *caused by loss, damage, or destruction by any of the perils* not excluded” did not require physical damage to trigger civil authority or ingress/egress coverage)
- **Nature of this coverage changes the factual scenario under which claims arise**

TIME ELEMENT EXTENSIONS

- Insures against loss resulting from damage to or destruction by cause of loss insured against to:
 - Contingent time element
 - Interruption by a Civil or Military Authority
- Civil Ingress/Egress provisions require that property damage occurs (often within a specific geographic radius of the insured's premises, such as within five statute miles, or on adjacent property) before the coverage is triggered
 - *Syufy Enters. v. Home Ins. Co.*, No. 94-0756 FMS, 1995 U.S. Dist. Lexis 3771 (N.D. Cal. Mar. 20, 1995)

INGRESS/EGRESS

- No physical damage to insured's own property but access is cut off causing income losses.
- Claims happen at sites near the direct catastrophe event.
- Language is often non-standard:
 - This policy is extended to cover the loss sustained during the period of time when, in connection with or following a peril insured against, access to or egress from real or personal property is impaired. This extension of coverage applies only to impairments as described above located within five (5) statute miles of the Premises Described and for up to 30 days.

SERVICE INTERRUPTION

- Coverage for losses suffered as a result of physical loss, damage or destruction to a utility, service or supplier of such service
- Allows recovery for business interruption losses suffered as a result of interruptions in service
- The property that may be damaged and the “services” that may be interrupted can vary from policy to policy
 - Some SI provisions specifically include coverage for interruptions resulting from damage to transmission lines, substations, equipment or other service or utility related items
 - Some SI provisions may also allow coverage for interruptions of internet or intranet and wireless communications

CONTINGENT EXTRA EXPENSE

- Reimburses the insured for additional costs incurred to avoid a cessation or slowdown in business
- Expenditures in excess of normal operating costs that are required to keep the business going while repairs to physical property damage are made
- Coverage for an expense usually depends on whether it was incurred to expedite repairs or minimize the loss
- Additional payroll
- Cost of renting temporary space
- Cleanup costs following property damage
- Increased utility costs



PROVISIONS APPLICABLE

Contingent Business Interruption, Extra Expense and Rental Value

- Period of Recovery : Length of time for which loss may be claimed:
 - Shall not exceed such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair, or replace the property that has been destroyed or damaged
 - And, such additional length of time to restore the Insured's business to the condition that would have existed had no loss occurred, commencing with the later of the following dates:
 - The date on which the liability of the Company for loss or damage would otherwise terminate; or
 - The date on which repair, replacement, or rebuilding of the property that has been damaged is actually completed.

DOES THE PERIOD OF RESTORATION INCLUDE GOVERNMENTAL DELAYS AND OTHER POST-DAMAGE CORRECTIVE ACTION?

- *Compagnie des Bauxites de Guinea v. Insurance Co. of North America*, 794 F.2d 871 (3d Cir. 1986)
- Courts have also concluded that the Period of Restoration contemplates time to ensure the property that suffered damage does not suffer future damage.
- Generally, regulatory action triggered by a loss is not a separate cause of loss
 - *Throgs Neck Bagels v. GA Ins. Co.*, 241 A.D.2d 66, 70-71 (N.Y. App. Div. 1st Dep't 1998)
 - *Nationwide Mut. Fire Ins. Co. v. Rhee*, 160 Ga. App. 468 (Ga. Ct. App. 1981)
- Fortuity Requirement in CBI cases - Service Provider's Activities are not always imputed to the Insured
- Generally, courts adhere to definition of "fortuitous event" set forth in the Restatement of Contracts:
 - Definition of fortuitous event
 - If the dependent property is not well maintained by its operator, you may still be covered if the loss is fortuitous as between you and your carrier

POLICY “WAITING PERIOD” CALCULATION

Expressed in the form of a period of time

- Generally calculated from the date of first damage to a covered property.
- Disputes have arisen when, as is frequently the case, the policy is not clear as to the proper method of calculation for the end point of the waiting period.
- At least one insurer has taken an unusually aggressive position, arguing that a 72-hour waiting period means nine working days because the insured’s business is only open eight hours per day.
- Another insurer has argued that a 30-day deductible for Time Element Loss operates as a qualifying period, such that a Contingent Business Interruption loss would not be insured unless the supplier's property was damaged and closed for at least 30 days, even though the supplier's closure caused the insured to suffer loss for months thereafter.

WIDE AREA IMPACT

- Insurers try to use the area-wide impact of the storm to argue that the demand for insured's goods or services declined following the loss, and that this loss-related decline is not covered
- But because the point of reference is the time of loss, any post-storm reduction in demand should be irrelevant
- N.Y. caselaw rejects loss of market exclusion as applied to area-wide impacts of a single storm event
- *Duane Reade, Inc. v. St. Paul Fire & Marine Ins. Co.*, 279 F. Supp. 2d 235 (S.D.N.Y. 2003)(area-wide impact around location due to 9/11 damage not “loss of market”)
- This issue is likely to lead to significant dispute with insurers and their adjustors as to both coverage and loss quantification

HOW CARRIERS MINIMIZE CBI RISK

- Duration limits: 30-60 days common
- Sublimit: \$1 million for unnamed suppliers
- Named Suppliers required: Unless they are on the list - no coverage
- Specific CBI Exclusions
- Deductibles: 60 day waiting period for commencement of loss

CHALLENGES OF PROVING CONTINGENT BI CLAIM

- Requires proof of damage to third party location, including period of closure and cause and effect on insured
- Policies lack guidance on how to prove loss of business due to covered peril affecting customers or suppliers
- Insurers are taking hard stances on Sandy CBI loss claims
- Recent revisions to CBI clauses make coverage even more iffy
 - Requiring listing of suppliers or dependent property
 - Limit to first tier suppliers
 - Low sublimits and high deductibles



QUESTIONS?



ALBANIA ALGERIA ANGOLA ARGENTINA
ARMENIA ARUBA AUSTRALIA AUSTRIA
AZERBAIJAN BAHAMAS BAHRAIN
BARBADOS BELARUS BELGIUM BOLIVIA
BOTSWANA BRAZIL BRITISH VIRGIN
ISLANDS BULGARIA BURUNDI CAMBODIA
CANADA CAPE VERDE CAYMAN ISLANDS
CHILE CHINA COLOMBIA COMOROS
COSTA RICA CROATIA CURAÇAO CYPRUS
CZECH REP. DENMARK DOMINICAN
REPUBLIC ECUADOR EGYPT EL
SALVADOR ESTONIA FINLAND FRANCE
GEORGIA GERMANY GIBRALTAR GREECE
GREENLAND GUATEMALA GUERNSEY
HONG KONG HUNGARY ICELAND INDIA
INDONESIA IRELAND ISLE OF MAN ISRAEL
ITALY JAMAICA JAPAN JERSEY JORDAN
KENYA KOREA KOSOVO KUWAIT
KAZAKHSTAN KYRGYZSTAN LATVIA
LEBANON LIECHTENSTEIN LITHUANIA
LUXEMBOURG MACAO MACEDONIA
MADAGASCAR MALAWI MALAYSIA MALTA
MAURITIUS MEXICO MOLDOVA
MONGOLIA MONTENEGRO MOROCCO
MOZAMBIQUE NAMIBIA NETHERLANDS
NEW ZEALAND NIGERIA NORWAY OMAN
PAKISTAN PANAMA PARAGUAY PERU
PHILIPPINES POLAND PORTUGAL
PUERTO RICO QATAR ROMANIA RUSSIA
RWANDA SAN MARINO SAUDI ARABIA
SERBIA SEYCHELLES SINGAPORE SLOVAK
REP. SLOVENIA SOUTH AFRICA SPAIN SRI
LANKA ST LUCIA ST MAARTEN ST
VINCENT SWEDEN SWITZERLAND
TAIWAN TAJIKISTAN TANZANIA
THAILAND TRINIDAD & TOBAGO TUNISIA
TURKEY TURKMENISTAN UAE UGANDA
UKRAINE UNITED KINGDOM URUGUAY
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