

Client Alert

A report
for clients
and friends
of the firm August 2003

Potential Insurance Coverage For Blackout Losses

In the aftermath of the biggest power outage in American history, businesses are considering their options for recovering losses incurred during the blackout. Depending on the specific coverage a business carries, some recovery may be had by means of insurance.

Many commercial insurance policies specifically exclude coverage for power or utility service failure, especially if the failure occurs outside of the business premises. Even with such an exclusion, however, some policy forms, such as the 1999 ISO Commercial Property Cause of Loss Special Form CP 10 30 10 00, provide that the insurer will pay for the loss or damage caused by a separate "Covered Cause of Loss" resulting from the failure of power. For example, if overhead sprinklers were set off as a result of the heat that builds in an office building without power during a blackout, the losses caused by water damage may be covered.

Business interruption coverage is another insurance product that could potentially cover losses caused by the blackout. The essential nature and purpose of business interruption insurance is to protect against consequential losses – including lost income – from unforeseen perils. Some business interruption policies require that the insured prove some resulting physical property damage in order to make a claim, and exclude losses from direct damages or impact. In fact, the ISO Form clause governing the three business interruption policies under that portfolio program – the Business Income Coverage (and Extra Expense) Form, the Business Income Coverage (Without Extra Expense) Form, and the Extra

Expense Coverage Form – is virtually identical to the clause discussed above which governs blackout losses in the ISO general commercial property program. Some business interruption policies also require a loss of operations for more than 24 hours, a condition that for some businesses may be difficult to meet, as last week's outage was largely resolved in most areas in less than 24 hours.

Not all Business Interruption policies, however, contain loss or time restrictions. Generally, the scope of coverage will differ from policy to policy, depending on what different terms, if any, were negotiated during placement.

If your policies contain an express coverage enhancement for service interruption, both property damage and business interruption losses may be covered. Again, the policy terms for such coverage will govern whether your losses from the blackout are covered. For example, service interruption coverage might be limited to accidental power outages and therefore will not provide coverage for the deliberate decision of a utility company to interrupt service. As it is presently unclear what caused the blackout, and whether the service interruption any particular business suffered was the result of an "accidental" outage, the extent of any coverage under such a service interruption enhancement is uncertain.

Business operators should carefully review their insurance policies for important information related to coverage for electric disruption and to see if they have enhanced coverage. It is also important to confer with insurance brokers or agents to further determine the extent of coverage available for losses sustained as a result of the blackout. If you believe you have a potential claim, notice should be given to your insurers immediately and all documents bearing on your claim should be preserved.

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