

Adding Sublimits To Coverage Extensions May Not Be Enough

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All risk insurance policies typically provide coverage for loss of or damage to the insured property unless otherwise excluded. Coverage is provided for physical damage, as well as resulting business interruption losses. Such policies sometimes also include coverage for loss resulting from damage to property that wholly or partially prevents a supplier from providing goods to the insured. This coverage is referred to as Contingent Time Element coverage.

In [Lion Oil Company v. National Union Fire Insurance Company of Pittsburgh PA](#), case no. 1:13-cv-01070 (W.D. Ark. Nov. 2, 2015), the district court held that an extension of coverage for Contingent Time Element included Contingent Extra Expense coverage even though the policy made no reference to such coverage beyond the inclusion of “extra expense” in the definition of “Time Element.” In determining the scope of coverage, the court stated that it applied general principles of contract interpretation, attempting to apply the plain language of the policy in a way that gives effect to all the provisions, even though the defendants argued that finding Contingent Extra Expense coverage in the absence of a specific coverage grant would lead to an absurd result.

Up From the Ground Came Bubbling Crude ... The insured, Lion Oil, owned and operated an oil refinery in El Dorado, Arkansas. It received oil from the North Line pipeline, which is owned and operated by EMPCo, a subsidiary of ExxonMobile. The pipeline ruptured in Louisiana on April 28, 2012. After the rupture occurred, EMPCo notified the Department of Transportation Pipeline and Hazardous Material Safety Administration, which required corrective action and testing in addition to repairing the rupture. Hydrostatic testing began in July 2012 and lasted until September 2012. EMPCo was granted permission to restart the pipeline in October 2012, but Lion Oil did not begin receiving crude oil from the pipeline until March 2013. It sought coverage from its insurers for the losses incurred while the pipeline was inoperable.

The insurers denied coverage, arguing that the portion of the pipeline that ruptured was repaired within the policy’s business interruption deductible period and that there was no coverage for the

subsequent period during which EMPCo was testing the pipeline. Accordingly, Lion Oil sued its insurers for coverage. By [order](#) dated Sept. 10, 2015, the court denied the insurers' motion for summary judgment, finding that whether the rupture of the pipeline or EMPCo's subsequent decision to hydrostatically test the pipeline following the rupture was the efficient cause of Lion Oil's loss was a question for the jury.

A Slippery Slope

In preparing the case for trial, the parties filed motions for Judgment as a Matter of Law Regarding the Applicability of Contingent Extra Expense Coverage. The only question before the court was whether the insurance policy provides Contingent Extra Expense Coverage.

The Contingent Time Element coverage extension provides:

(5) Time Element Extensions

(a) This policy, subject to all provisions and without increasing the limits of this policy, also insures against loss resulting from damage to or destruction by causes of loss insured against, to:

...

(ii) Contingent Time Element: property that wholly or partially prevents any direct supplier of goods and/or services to the Insured from rendering their goods and/or services, or property that wholly or partially prevents any direct receiver of goods and/or services from the insured from accepting the insured's goods and/or services, such supplier or receiver to be located anywhere in the policy territory;

The definition of "Time Element" states:

H. Time Element

The term Time Element means any one or all of the following coverages: Business Interruption, Extra Expense, Contingent Business Interruption, Contingent Extra Expense, Rental Value, Royalties, Service Interruption (Time Element), Ingress/Egress, Interruption by Civil or Military Authority and all other Time Element extensions provided.

The policy included sublimits for Extra Expense and Contingent Business Interruption, but no sublimit for Contingent Extra Expense. Defendants argued that because Contingent Extra Expense is not listed in the policy beyond the reference in the Time Element definition, but Contingent Business Interruption coverage is, the parties only bargained for Contingent Business Interruption coverage.

The court, however, was unpersuaded, stating:

The losses insured under the Contingent Time Element coverage extension are not limited to Business Interruption losses, as defendants would have the court read the clause. Instead, the Contingent Time Element extension expands Business Interruption and Extra Expense to losses resulting from damage or destruction to third-party property. Because CEE is listed as an available coverage in the Time Element definition, and has not been excluded in any way, the Contingent Time Element extension extends the coverage to protect against those losses.

The court determined that the fact that Contingent Business Interruption was sublimited supported its reading of the policy. Contingent Business Interruption did not specifically appear in the policy except that it was sublimited. The Court explained that “[t]he fact that CBI is not specifically enumerated, but is clearly covered since it was later sublimited, supports the fact that CEE is also covered. CEE is not listed in the policy again because it was not sublimited.”

While the defendants argued that this result was absurd, the court disagreed, finding that the policy language was only susceptible to one reasonable construction. As such, the court would not consider extrinsic evidence and it held that, as a matter of law, the policy includes coverage for Contingent Extra Expense.

This case is a cautionary tale for insurers who add extensions of coverage. It is not necessarily enough to add a sublimit to limit the intended scope of coverage provided by the extension of coverage if the extension is arguably broader — in this case providing coverage for Contingent Time Element — than the sublimit — in this case limiting coverage for Contingent Business Interruption, which is just one of several types of Time Element coverages. Republished with permission by [Law360](#) (subscription required). Originally published by [PropertyCasualtyFocus](#).

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