

International risk team



The impact of COVID-19 on existing business interruption claims

The global spread of COVID-19 and its impact on a wide range of businesses is unprecedented in its speed and scale. Much has been written on insurers' potential exposure under infectious disease and public authority extensions due to the cessation of business and broader 'lockdowns' as a direct result of the virus. However, prior to such lockdowns, many businesses were already suffering interruptions to their operations and consequential loss of revenue, due to insured property damage events whether arising out of fire, flood, breakdowns of machinery or other insured perils. In many instances the impact of COVID-19 on the supply of replacement parts and labour to repair damaged equipment has resulted in such pre-existing interruption periods becoming prolonged.

However, the effects of COVID-19 are not unique in this sense. It is not uncommon that global, regional or local shortages

of replacement parts or labour lead to delays in reinstating damaged property and restoring business operations. Where such factors would not have affected business operations but for the original damage event, insurers often conclude that cover is engaged for the prolonged interruption period provided that the original incident remains the *proximate cause* of the interruption.

Absent a pre-existing damage event, the fact that replacement parts are not readily available would not in the normal course of events have resulted in the cessation of operations. Accordingly, where there *has* been an insured damage event, the lack of available replacement parts due to COVID-19 will not normally constitute a new and intervening cause of existing interruption losses. The position is typically the same where factors such as the lack of availability of specialist labour required to undertake repairs

due to COVID-19 prolongs the insured interruption period.

However it is necessary to consider any such post-incident events carefully in order to assess whether they constitute a new and intervening cause of the business interruption loss. An example of this is the impact of public authority edicts. Where the damage event (as distinct from the peril which caused it) results in an investigation by a public authority into the incident, thereby leading to delays in reinstatement, such prolongation of the interruption period may well be covered. In contrast, where public authorities order a lockdown due to a novel coronavirus, thereby extending an existing interruption period flowing from insured damage, the further delay due to the forced closure of the business and cessation of repairs may fall outside of cover, absent an operable civil authority or infectious disease extension

(unless it could be established that the original property damage event continues to be a concurrent effective cause of the interruption during this period).

Where the trading results of the business would have been affected even in the absence of any insured damage incident, and where the reduction in turnover is therefore not *wholly* due to the incident, it will be necessary to make an adjustment under the “other circumstances clause”. Depending on the circumstances, these adjustments can be either upwards or downwards.

So where turnover has been impacted due to an insured event and there is then a further reduction in turnover due to delays in obtaining *raw materials* because of (for example) industrial action, insurers should not have to cover the effects of the strike, which would have impacted turnover in any event. Likewise, for example, the drop in revenue seen by many tourist dependent businesses in Hong Kong following the 2019-20 political

unrest would be one factor that would need to be taken into account in any business interruption calculation.

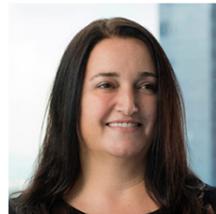
Such questions of causation are not limited to business interruption losses arising under operational policies. Construction All Risks insurers will wish to consider issues of causation as regards any delay in start-up cover and identify any losses which are attributable to COVID-19 as opposed to having resulted from insured damage, as well as any policy conditions relating to the cessation of works.

Issues of causation are often difficult in the context of business interruption policies. In the present circumstances, with lockdowns and social distancing measures in force throughout the world, concurrent causes of delay are likely to be in play and will need to be factored into the analysis. Given the significant sums that often turn on these questions, it is worthwhile giving them careful consideration.



Mark Errington
Partner

+65 6422 3040
mark.errington@rpc.com.sg



Summer Montague
Senior Associate

+65 6422 3042
summer.montague@rpc.com.sg

The RPC international risk team

Energy | Power | Marine | Construction | Mining | Heavy Industry | Cyber | Political Risk | Political Violence | Trade Credit | Specialty | Facultative & Treaty | First Party and Liability



Iain Anderson
Partner

+65 6422 3050
iain.anderson@rpc.com.sg



Dorothy Flower
Partner

+44 20 3060 6481
dorothy.flower@rpc.co.uk



Antony Sassi
Partner

+852 2216 7101
antony.sassi@rpc.com.hk



Naomi Vary
Partner

+44 20 3060 6522
naomi.vary@rpc.co.uk



Paul Baker
Legal Counsel

+44 20 3060 6031
paul.baker@rpc.co.uk



Damon Brash
Senior Associate

+44 20 3060 6247
damon.brash@rpc.co.uk



William Jones
Senior Associate

+65 6422 3051
william.jones@rpc.com.sg



Hugh Thomas
Senior Associate

+44 20 3060 6025
hugh.thomas@rpc.co.uk



Leah Wood
Associate

+44 20 3060 6203
leah.wood@rpc.co.uk



Richard Breavington
Partner

+44 20 3060 6341
richard.breavington@rpc.co.uk



Carmel Green
Partner

+852 2216 7112
carmel.green@rpc.com.hk



Toby Savage
Partner

+44 20 3060 6576
toby.savage@rpc.co.uk



Leigh Williams
Partner

+44 20 3060 6611
leigh.williams@rpc.co.uk



Prakash Nair
Director

+65 6422 3061
prakash.nair@rpc.com.sg



Chris Burt
Senior Associate

+44 20 3060 6593
chris.burt@rpc.co.uk



Jonathan Lim
Senior Associate

+65 6422 3062
jonathan.lim@rpc.com.sg



Gary Walkling
Senior Associate

+44 20 3060 6165
gary.walkling@rpc.co.uk



Mark Errington
Partner

+65 6422 3040
mark.errington@rpc.com.sg



Catherine Percy
Partner

+44 20 3060 6848
catherine.percy@rpc.co.uk



Victoria Sherratt
Partner

+44 20 3060 6263
victoria.sherratt@rpc.co.uk



Gerald Yee
Partner

+65 6422 3060
gerald.yee@rpc.com.sg



Alex Almaguer
Senior Associate

+44 20 3060 6371
alex.almaguer@rpc.co.uk



Samuel Hung
Senior Associate

+852 2216 7138
samuel.hung@rpc.com.hk



Summer Montague
Senior Associate

+65 6422 3042
summer.montague@rpc.com.sg



Rebecca Wong
Senior Associate

+852 2216 7168
rebecca.wong@rpc.com.hk

Helping to resolve high value insurance claims – worldwide