Introduction to Business Interruption Insurance

In recent years, the industry has been shaped by a series of global events: from the Covid-19 pandemic to armed conflicts and the growing frequency of extreme weather incidents such as floods and wildfires. Each of these crises has triggered complex disputes and, in turn, rapid developments in case law.

At 4 Pump Court, our Insurance Team is at the forefront of many of the most significant and high-value disputes in the market today. In this article, we turn our attention to traditional business interruption (BI) claims. While Covid-19-related BI litigation continues to be highly relevant it's timely to revisit the core principles underpinning BI cover where loss flows from physical damage to property. These foundational issues remain central to many ongoing claims and policy wordings. For example, in March 2025, a major fire disrupted operations at Heathrow Airport in London, affecting the travel plans of over 300,000 passengers. Business interruption events of this scale are rare—but are likely to give rise to numerous BI claims for lost revenue.

Business Interruption: Main Principles

Standard BI insurance provides cover for losses caused by interruptions to the insured's business arising from property damage. A policyholder will often have BI cover in addition to property damage cover. While property damage is "backward-facing" (i.e., it responds to damage that has already occurred), BI cover is "forward-facing" in that it relates to financial losses flowing from that damage.

The key elements of a successful BI claim typically include:

1. The business interruption must result from loss, destruction, or damage caused by an insured peril.
2. The interruption must be suffered due to damage to property insured by the policy, at the premises described in the schedule.
3. The damage must cause interruption to the business carried on at the scheduled premises; indemnity is confined to losses arising from that interruption.
4. The interruption must arise in consequence of insured damage to property used by the insured.
5. There must be a material damage policy covering the insured's interest in the property, and the claim must be admitted by the relevant insurer (the "material damage proviso").

Property Damage?

"Damage" is central to traditional BI cover. It may be defined in the policy and it is also essential to establish that the insured has a **sufficient insurable interest** in the damaged property—typically a personal proprietary interest (see *Glengate-KG Properties Ltd v Norwich Union Fire Insurance Society Ltd* [1996] 1 Lloyd's Rep. 614).

While determining whether "damage" has occurred is often straightforward, it can raise difficult questions:

- Is a **temporary physical change** sufficient? Not necessarily (*Hunter v Canary Wharf*).
- Does **contamination** amount to damage? It can do (*Jan de Nul (UK) Ltd v AXA Royale Belge SA* [2002] EWCA Civ 209), but mere fear of future damage does not qualify. (Note: contamination is often excluded in BI policies.)
- Can a **computer virus** constitute "damage" to IT systems?
- Where case law on "damage" in first-party cover is sparse, Courts may look to third-party liability authorities. *Pilkington UK Ltd v CGU Insurance Plc* [2004] EWCA Civ 23 suggests "damage" **requires a demonstrable physical**

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change that diminishes value or utility.

The policy's requirement for physical damage can have far-reaching consequences. In the US, many BI policies only responded where physical damage occurred—so closures due to government lockdowns were not covered (see *Cordish Companies, Inc. v. Affiliated FM Ins. Co.*, 2021 WL 5448740). In the UK, the Court of Appeal recently confirmed that a policy requiring "damage" (defined as "physical loss, physical damage, physical destruction") did not respond to pandemic-related closures (*Bellini (N/E) Ltd v Brit UW Limited* [2024] EWCA Civ 435).

The Interruption and Causation

Not only must damage exist—it must also be the **proximate cause** of the business interruption. The usual causation chain is: insured peril ⊠ damage ⊠ interruption ⊠ loss.

The question of proximate cause is not purely legal; it also demands factual evidence and commercial common sense. What part of the loss was truly caused by the insured peril—and which parts resulted from other, unrelated events that break the chain of causation?

Proximate cause in insurance law refers to the **"dominant, effective, or operative cause"** (*Leyland Shipping Co Ltd v Norwich Union* [1918] AC 350). It is codified in **s.55 of the Marine Insurance Act 1906** and has been explored in many cases involving multiple or concurrent causes (e.g., flood and pandemic lockdowns).

This issue becomes acute in **wide area damage** scenarios—e.g., hurricanes or floods impacting not only the insured premises but the entire region. In such cases, the debate often centres on causation and trends clauses.

The ***Orient Express*** case had long stood as a key authority on this issue, but was overruled by the Supreme Court in the ***FCA Test Case*** ([2021] UKSC 1). The Court found that where multiple concurrent causes share a common origin, and are each necessary but not sufficient alone, cover may still be triggered. Importantly, however, the Court reaffirmed that 'but for' causation remains the correct starting point, while proximate cause remains central to the analysis. More on this in the next edition.

Quantum

Once cover is established in principle, quantifying a BI claim can be a further challenge. It's a technical, evidence-heavy exercise involving forensic accounting and careful policy analysis.

Usual BI Heads of Loss:

- **Loss of gross profit or revenue** during the indemnity period;
- **Increased cost of working (ICOW)** to sustain operations.

Loss of Gross Profit: Quantum is often calculated by comparing actual turnover during the indemnity period with the turnover that would have occurred but for the interruption. Many policies define gross profit as: Turnover minus variable costs (e.g., raw materials, cost of sales). This figure is then adjusted to reflect business trends or special circumstances.

Indemnity Period: The indemnity period—typically 12, 18, or 24 months—limits the duration of recoverable loss. It usually begins from the date of damage. Delays in recovery caused by the insured may limit the recoverable period.

Trends Clauses: these allow adjustments to reflect what would have happened even without the damage—such as market decline or the loss of a major customer. However, in the *FCA Test Case* the Supreme Court held that these clauses should not be used to make adjustment for circumstances arising out of the same cause as the insured peril (i.e. the

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trend of the Covid-19 pandemic could not be used to reduce BI cover for claims arising from the Covid-19 pandemic).

Key Questions:

- What are the relevant covered losses?
- What is the indemnity period?
- Have the losses been mitigated, or reduced due to wider market trends?
- Is there additional increase in cost of working (AICOW) cover?

Evidence that is often required:

- Management accounts, budgets, and forecasts;
- Historical trading figures (typically 12–24 months pre-loss);
- Expert forensic accounting to model the hypothetical "but for" position.

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