

LOSS OF INGRESS OR EGRESS: IS THERE COVERAGE FOR DENIAL OF ACCESS TO AN INSURED LOCATION?

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Communities in Florida, Texas, and Puerto Rico continue to recover from Hurricanes Harvey, Irma and Maria. Meanwhile, the wildfires in California gave way to mudslides, which shut down highways and caused substantial property damage. These disasters have created a multitude of property insurance coverage issues, including questionable income claims related to ingress and egress.

Losses related to a loss of access to insured property are not typically covered under a standard Business Income Coverage provision.¹ However, insurance companies typically offer several types of coverage that are designed to address this situation. In addition to Civil Authority Coverage, which applies where an order of civil authority prohibits or prevents access to an insured property, some commercial insurance policies also include an additional coverage for loss of ingress or egress. The key distinction between these two coverages is that Ingress/Egress Coverage is triggered without an order of civil authority to be triggered.

Ingress/Egress Coverage, perhaps more than any of the other time-element coverages, is dependent on the specific policy language at issue. Two frequent issues for litigation are whether Ingress/Egress Coverage requires physical damage to be triggered, and whether there is a territorial limitation on the coverage. The answer to both of these questions is, more often than not, “it depends.”

PHYSICAL DAMAGE REQUIREMENTS

The United States District Court for the Eastern District of North Carolina interpreted an Ingress/Egress coverage provision in *Fountain Powerboat Indus. v. Reliance Ins. Co.*,² which read:

Loss of Ingress or Egress: This policy covers loss sustained during the period of time when, as a direct result of a peril not excluded, ingress to or egress from real and personal property not excluded hereunder, is thereby prevented.³

The *Fountain Powerboat* plaintiff claimed a loss of business income because its employees were unable to access its facility during a hurricane due to poor road conditions.⁴ There was no property damage. The court held that the meaning of the ingress/egress provision was “exceedingly clear,” and held that the ingress/egress provision did not require physical damage.⁵ This language triggered coverage for the income claim.

A small change in the ingress/egress provision can lead to a significantly different result. In *County of Clark v. Factory Mut. Ins. Co.*⁶ the language included a requirement that prevention of ingress/egress be the direct result of physical damage.⁷ Based on the use of the term “direct,” the district court held that no coverage was provided for losses of business income sustained as a result of the mandatory ground stop order issued by the FAA following the September 11th attacks

because prevention of ingress was, at best, an indirect result of the damage to the World Trade Center.⁸ In short, the distinction regarding property damage arises directly from the relevant policy language.

TERRITORIAL LIMITATIONS

The United States District Court for the Northern District of Illinois addressed territorial limitations on Ingress/Egress coverage in *City of Chicago v. Factory Mut. Ins. Co.*⁹ In *City of Chicago*, the Policy stated:

This policy will cover the Actual Loss Sustained by the Insured due to the necessary interruption of the Insured's business due to prevention of ingress to or egress from the Insured's property, whether or not the premises or property of the Insured shall have been damaged, provided that such interruption must be a result of physical damage of the type insured against and not excluded by this policy, to the kind of property not excluded by this policy.¹⁰

City of Chicago is another case that arose out of the FAA's ground stop order after the September 11th attacks. In this case, however, the district court did not focus on the ingress/egress provision's physical damage requirement. Rather, the court found a territorial limitation on the coverage.¹¹ The relevant insurance policy covered real property within Chicago in which the City had an insurable interest along with the area within 1,000 feet of such property.¹² Accordingly, the district court interpreted the ingress/egress provision, consistent with its "unambiguous language," as being triggered only where the prevention of ingress/egress is a result of damage to property this is at or within 1,000 of the airport premises covered by the policy.¹³ Thus, no coverage was available for losses of income stemming from the damage to the World Trade Center.¹⁴

If the cases interpreting Ingress/Egress Coverage provisions make anything clear, it's that coverage for these losses rises and falls with the language of the insurance policy. Accordingly, when addressing these claims, insurance companies will need to pay close attention to the specific language used in their policy forms.

At Horst Krekstein & Runyon, we pride ourselves on being at the forefront of developing issues in the insurance industry. If you would like additional information concerning this or any other issue, please do not hesitate to contact us.

¹ See *Harry's Cadillac-Pontiac-GMC Truck Co. v. Motors Ins. Co.*, 486 S.E.2d 249 (N.C.App. 1997).

² 119 F.Supp.2d 552 (E.D.N.C. 1997).

³ *Fountain Powerboat Indus. v. Reliance Ins. Co.*, 119 F.Supp.2d 552, 556 (E.D.N.C. 2000).

⁴ *Id.*, at 554.

⁵ *Id.*

⁶ 2005 U.S. Dist. LEXIS 47574 (D.Nev. March 28, 2005).

⁷ *Id.*, at *13.

⁸ *Id.*, at *14.

⁹ 2004 U.S. Dist. LEXIS 4266 (N.D.Ill. March 18, 2004). *See also Aztar Corp. v. U.S. Fire Ins. Co.*, 224 P.3d 960 (Ariz. 2010)(five mile territorial limitation).

¹⁰ *Id.*, at *6.

¹¹ *Id.*, at *9.

¹² *Id.*

¹³ *Id.*, at *9-10.

¹⁴ *Id.*, at *10.