JANUARY 2022

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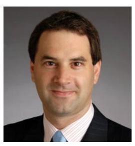
Policyholder Alert

Wake-up Call: Understanding Commercial Fire Insurance Coverage in the Wake of the Colorado Wildfire




By Marshall Gilinsky
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Key points:

The wildfire that struck Boulder County, CO, on December 30 was the most destructive in the state's history

In an era of intensifying natural disasters, businesses need to be aware of all their coverages and be prepared to maximize recovery

Coverages to consider besides property damage include business interruption, contingent business interruption, extra expense, and civil authority

Like so many natural disasters of the last few years, the wildfire that struck Boulder County, Colorado, on December 30 was a norm-breaker — striking long after the fall wildfire season, and wreaking more damage than any wildfire in the state's history. The fire destroyed nearly a thousand buildings, including whole subdivisions, according to a **list** posted on January 1 by Boulder County authorities. Insured losses will likely approach $1 billion, according to an **estimate** by Karen Clark and Company.

While most of the destroyed buildings were private homes, a number of retail business buildings were also destroyed, including a major shopping center, as well as a hotel and the town hall of Superior. The fire's extraordinary intensity and unpredictable, off-season onset should constitute a wake-up call to all businesses to review and assess their property insurance policies and make sure they understand the full range of coverages that may apply if fire strikes their premises or the surrounding area.

In Colorado, as noted in more detail below, authorities have directed insurance companies to take the current, extraordinary circumstances into account

when responding to claims. As Colorado law is also responsive to bad faith claims — also addressed below — policyholders seeking recovery from the wildfire have good cause to expect and demand prompt and responsive claims handling from their insurance companies.

In the aftermath of a wildfire, businesses of all sizes need to assess not only physical damage to their property but also income losses stemming from blocked roads, interrupted shipments, evacuations, and closures by civil authority. Affected businesses should look for coverage not only to repair physical damage to their own premises, but also for lost income stemming from business interruption while the insured premises is restored, as well as contingent business interruption losses caused by damage away from the insured premises.

Business interruption (BI) coverage and related extensions of coverage insure businesses against income losses stemming from interruptions to daily operations. BI coverage may be triggered by circumstances including a forced shut-down, a downturn in business due to damage to premises, or impairment of access to a business's plant or premises.

Many commercial property policies include **extended business interruption** coverage that enlarges the period of time that business income coverage is available — starting from when the physical property reasonably can be repaired and ending when operations are fully ramped up and the business has returned to its pre-loss levels. In some policies, however, this extension has time limits of a few months.

Businesses that are not themselves physically damaged or forced to close may be able to access **contingent business interruption** coverage, triggered by loss or damage to suppliers or customers located away from the insured premises. While the insured premises need not be physically damaged, it does need to have coverage for the type of loss or damage that affected its suppliers or customers. Contingent business interruption is a standard provision in many property policies, though small business policyholders are often unaware of it.

Also potentially in play after a wildfire is **civil authority** coverage, triggered when loss or damage away from the insured premises results in an order of civil authority that restricts access to the insured premises. Similarly, **ingress egress** coverage insures lost profits when remote loss or damage itself restricts access to the insured premises. Again, damage to the insured's own property is not required to trigger this coverage — though typically, the losses must result from loss or damage of a type covered by the insurance policy. These coverages are also ones that may escape the awareness of small businesses.

Extra expense coverage applies to costs (other than repair or rebuilding) incurred by the policyholder to continue operations in the wake of property damage, such as moving to a temporary site and equipping that site. This coverage often is very broadly defined and very valuable.

Calculating the full range of business income loss from property damage, disruption of the surrounding area, and closures by order of civil authority is a complex task. The more thorough the documentation, the more likely the policyholder is to receive full or near-full acceptance of the claim from the insurance company — or, if necessary, to push back against the insurance company's attempts to limit the claim payments or deny the claim. To that purpose, the services of a public adjuster, skilled in the ways insurance companies calculate losses, can be valuable.

While outright coverage denials for fire damage claims are rare, insurance company delays and disputes over amounts claimed, the period of recovery in business interruption losses, actions taken to mitigate damage, and a host of other issues are all too common.

Current economic business conditions may complicate recovery in a variety of ways. Insurance companies may attempt to lowball business interruption losses, claiming that business was depressed by the pandemic. Supply

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chain disruptions and general shortage of construction materials and labor may increase rebuilding costs and stretch out timelines.

Recognizing the latter problem, the Colorado Division of Insurance has directed homeowners insurance companies to "take into account all circumstances affecting the claim, including, but not limited to, labor and material shortages and other circumstances affecting the claim but not directly caused by the catastrophic disaster" and to "toll the policy time limits for the policyholder to complete the repair or replacement of the damaged part of the property necessary for issuance of the replacement cost value payment." While those directives are aimed at homeowners' policies, they may also provide a signal to business owners to be proactive in seeking such forbearance.

Fortunately for policyholders in Colorado, an insurance company can be held liable for bad faith breach of an insurance contract where it unreasonably refuses or delays making payments owed under the policy. Policyholders also can assert claims for bad faith under Colorado statute, which provides for an award of double damages and attorneys' fees, where an insurance company unreasonably denies or delays payment of the claim. Colo. Rev. Stat. Ann. §§ 10-3-1115, 10-3-1116.

Coping with the aftermath of disaster is trying under the best of circumstances. Insurance can provide crucial relief — and policyholders should be careful that they are getting paid what they are owed by insurance. Maximal recovery depends on understanding the full range of your coverage, working with an experienced team to facilitate the insurance company's understanding of the claim, and insisting that all available coverages are included and accounted for in the claim payment.

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