



Current Articles 2003 – November

When the Lights went out

On August 14, 2003 electric power was interrupted affecting over 50 million people in total in Ontario Canada , and in Connecticut, Vermont, Pennsylvania, Massachusetts, New York, New Jersey, Ohio, Michigan in the United States.

The basic commercial property policies, both for direct loss and indirect loss (Business Interruption) exclude losses caused by spoilage and for losses caused by power loss. The exception to this would be if the power outage caused direct physical loss such as causing a fire. However the majority of losses will be caused by the indirect or consequential loss (spoilage from change in temperature) caused by the power outage.

At this time the exact cause of the power outage is not known. Until the cause is admitted, it is impossible to determine the "proximate" cause of the loss. Most policies and/or endorsements will only supply or extend coverage if " *the loss, destruction or damage to stock is due to change in temperature resulting from damage, caused by the perils insured against*". Consequently, until the cause of the outage is made known, insurers are not prepared to honour these indirect claims.

If the commercial property policy included a Consequential Loss Assumption Clause, these endorsements may differ between insurers. I have reviewed a dozen or so endorsements and there can be subtle differences but such differences may be vital to this power outage. Basically there are two types of Consequential Loss endorsements – the basic Consequential Loss Assumption Endorsement and the broader Consequential Loss including Off Premise Power. In general terms for the first endorsement to apply the loss due to a change in temperature must be caused by a peril insured against and the loss must be to equipment as defined situated on the premises described in the Declaration Page. (One such endorsement restricted the loss to equipment within the building described in the policy. Therefore outside power lines or transformers on the premise but not within the building may be a problem)

The second endorsement also requires that the loss be caused by an insured peril but in addition to the coverage afforded by the above endorsement coverage also is extended to loss of stock due to a change in temperature caused by an insured peril to off premises public utility plants, substations, etc. Some of these broader endorsements may exclude losses caused from damage to off premise poles, towers, or transmission or distribution lines.

For Business Interruption the coverage may be subject to "waiting period" which may preclude coverage unless the period of suspension exceeds 48 or 72 hours, which for this outage did not apply.

With either endorsement there may be a deductible for the spoilage and which could be higher than the basic property deductible and there could be a sub-limit as low as \$25,000. per loss.

The Boiler insurers have addressed their position as being that a loss under a Boiler policy to perishable goods, business interruption or extra expense will only be covered as a result of breakdown of an insured object. Hence losses from a general power outage would not be covered. If when the power returned the resumption of power caused damage to the objects, then the resultant damage may be covered by a Boiler and Machinery Policy. Boiler policies with Service Interruption coverage may also not apply as this extends the coverage to apply to equipment not owned by the insured but located within 300 meters of the insured's premises.

Homeowner's policies that include – Freezer Foods Coverage, may cover spoilage from the outage as the usual wording states that coverage applies from a loss caused by "*accidental interruption of electrical power on or off the premises*". The coverage may apply without a deductible. In practical sense an insured may not want to proceed with a spoilage claim, which may be minimal, and have a claim recorded against the policy or cause the loss of a claims free discount.

This last blackout was preceded by similar situations in July, 1977 and Nov. 1965. Experts have warned that further blackouts may occur in the future. Certain risks, such as food stores, hospitals, restaurants, pharmaceutical risks, etc., are more vulnerable to spoilage and risk management recommendations and coverage recommendations should be considered before the next problem.

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