Timeline & Delay Analysis In Time Element Claims

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Time Element Coverage

- Business Interruption (BI)
- Off-Premises Business Interruption
  - Civil Authority
  - Ingress/Egress
  - Power and Service Interruption
- Extra Expense (EE)
- Construction-Related Time Element
  - Delay in Completion (DIC)
  - Delay in Opening (DIO)
  - Delay in Start-Up (DSU)
  - Advance Loss of Profits (ALOP)
  - Soft Costs

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“The loss of profit resulting from an interruption of the business insured, but not exceeding such time as would be required with the exercise of **due diligence and dispatch** to repair the property to the condition to which it existed prior to the loss”
The Role Of A Scheduling Expert In Forensic Timeline Analysis

- To assist the loss adjuster in measuring delay relating to the claimed loss
- Analyze schedules, progress reports and other construction and repair-related documents
Schedule analysis requires specialized software and experience to understand how the schedule has been manipulated and the factors impacting the schedule.
QUESTIONS TO ASK/ISSUES TO LOOK FOR:

1. How long should it take to complete repairs with due diligence and dispatch?
2. Have there been delays due to non-covered events/factors?
3. How do you account for the non-covered events?
4. When does the period of interruption end?
5. Voluntary betterment works or improvements to the project
   - As most policies require replacement of “similar quality,” the end/completion date for coverage purposes might be earlier than the actual end/completion date. *Amerisure Ins. Co. v. Roll Serv., Inc.*, 2002 WL 31101269, at *2, *5 (N.D. Ill. 2002).
QUESTIONS TO ASK/ISSUES TO LOOK FOR:

5. Betterment works or improvements undertaken in outage period?
6. Maintenance works brought forward into outage?
7. Code upgrades?
8. Delays from lack of access or caused by a civil authority? OSHA shutout?
9. Funding issues?
10. Redesign/correction of defects?
11. Delivery of materials or other efficiency issue
Time Element Measurement – In Practice

Legend
- Repairs
- Betterment Works
- Maintenance Works
- Non-Incident Related Delay
- Public Authority Restriction

Period of Interruption Solely Due to Incident = ???

RTS

DOL
Case Study
Grain Processing Plant

1970’S CONSTRUCTION
Case Study
Grain Processing Plant

Explosion and subsequent fire causes forced outage at the plant and repairs are required to bring the plant back into operation.
Case Study: Grain Processing Plant

KEY FACTS:

- Explosion & subsequent fire causes forced outage at plant
- Human injury caused by loss -- OSHA assumes control of site
- Expansion facility is being built at the plant which was originally planned to come online 4 months after the date of loss
- Before damage assessment is complete the insured decided to rebuild the damaged plant in different configuration with numerous upgrades (code and equipment)
- Insured states it expects plant to be operational in 8 months
- While removing equipment damaged by loss, crane tips over and damages area of the plant not damaged by the fire
- Planned maintenance of areas not impacted by the loss is brought forward into the outage period
- Plant returns to production 12 months after date of loss
- Claim from insured is for costs incurred to rebuild plant and BI for 12 months, including 8 months of lost production for Expansion Project
DISCUSSION – REPAIRS:

1. OSHA & subrogation impact?
2. Decision of insured to rebuild of plant in different configuration with potential upgrades?
3. Timeline analysis – critical path
4. Crane collapse
5. Planned maintenance brought forward and carried out alongside repairs
6. Delays to repair works
Is the Expansion Project (EP) delayed by the fire?
If so, is any delay to construction caused by fire covered under production policy?
Does the EP come on the risk when ready?
When is the EP actually ready to begin commissioning?
Any delays to the contract works of the EP that are non-loss related?
How do you measure BI as no record of this unit ever producing? Will they be able to sell all they produce immediately?
Case Study: Grain Processing Plant

KEY FACTS:

- Did insured repair as-was, where-was best that was possible?
- If not what needs to be done to determine measured covered loss?
- Did OSHA impact time of repair?
- Critical path of current repair project – long lead equipment or damage assessment, design and repair?
KEY FACTS (continued):

- Crane falling over – separate loss? Policy period? Deductible?
- Did the maintenance construction activities impact the period of interruption?
- Can a credit be taken for the downtime when maintenance originally planned to be completed?
- Did the upgrade works prolong the duration of the repairs?
- Exercising due diligence and dispatch what is a reasonable time for the repairs to take?
Adjustment Summary Checklist

COVERAGE ISSUES:

- Complete copy of policy with all endorsements and declaration pages
- Confirm policy period and covered property/locations
- Review covered and excluded perils
- If applicable, pay close attention to causation language with regard to multiple perils
- Time Element Coverage
  - BI and EE definitions
  - Period of Indemnity/Restoration and any extensions (ramp up?)
- Coinsurance, deductibles, waiting periods and limits
- Other issues
ADJUSTMENT SUMMARY CHECKLIST

LOSS INVESTIGATION:

- Document Insured’s version of events
- Date and time of occurrence
- What is damaged? Extent of damage? Document with photographs and inspection
- Prior damage or wear and tear?
- Cost to repair
- Number of events/occurrences
- Potential causes of damage
- If construction in progress prior to loss, identify any delays prior to loss.
- Potential causes of interruption or suspension of operations
- Code issues (Pre-existing? Related to repair of damage?)
- Timeline for repairs and/or to restore operations
- Potential ways for insured to mitigate loss (inventory, accelerating repairs, other locations, etc.)
- Other issues
REQUEST DOCUMENTS:

- Photographs, estimates, correspondence, and other documentation of loss or damage
- Financial records
- Construction Records
- Electronic Schedules
- Other records