



## The Economic Effect of Wide Area Damage - an Update

**See: Orient Express Hotels Limited and Assicurazioni General S.p.A. 2010**

The BI SIG has previously issued a technical note on the economic impact of widespread perils, issued to pick up on a number of points made in a technical release issued by a firm of eminent solicitors. That note, which has been available on the BI SIG publications page for over 18 months, has not been challenged in any way. Essentially, the conclusion in that note was that (under a UK wording), a business interruption loss should be assessed by assuming that Damage did not occur at the Insured Premises, but that Damage elsewhere still occurred. A hypothetical company manufacturing water pumping equipment would therefore be entitled to an upward trend had it not been flooded, but given that the surrounding Premises all were.

Reference is also made to the technical note on flooding issued in 2007 after the widespread flooding that occurred in that year. The diagrams which formed part of that note illustrated the principle that if the Meadowhall shopping centre had not been flooded, turnover would still have been reduced due to Damage occurring at the customers' Premises. It is necessary to reflect that, as part of the Other Circumstances clause. The policy covers loss flowing from Damage at the premises of the Insured, not Damage generally (obviating the denial of access and loss of attraction extensions).

The Orient Express Hotels (OEH) case reinforces this technical position.

OEH raised a number of points in the case:

- That the assumption of a peril affecting the surrounding area but leaving the Insured Property unscathed was artificial, hypothetical, and entirely fictional;
- The Other Circumstances clause required adjustments to trend before and after the Damage, and independent of it;
- The corollary of the ultimate finding is that a windfall gain similar to the water pump example suggested above could arise, and this principle had been previously rejected in other US cases (albeit on the turn of particular wordings);
- The cover available following Damage at the Premises would in effect reduce as the extent of damage in the wider area increased;



- Incorporating an adjustment in respect of wide area damage ignores the general principle of concurrent causes (ie. that uninsured concurrent causes should only be the subject of adjustment if they can be separately measured);
- Adjustment on the basis of wide area damage would result in confusion and inconsistency between loss arising from damage at the Premises, as opposed to Denial of Access or Loss of Attraction;
- The exclusion of losses arising from wider area Damage are not explicitly stated in the policy wording;
- BI texts, such as Riley, do not explicitly support the exclusion of wide area damage.

The judge, rejecting OEH's arguments, noted that the policy 'is concerned with the Damage, not with the causes of the Damage. What is covered are business interruption losses caused by Damage, not business interruption losses caused by Damage or 'other damage which resulted from the same cause'. This is consistent with the findings of the tribunal that initially considered the matter that found that it was not necessary 'to go behind the Damage and consider whether the event which caused the Damage also caused damage to other property in the city'.

This is aptly summarised at paragraph 60 of the judgement:

*'The scheme of the Policy is that business interruption losses caused by Damage to insured property are recoverable under the main insuring clause...Other losses not caused by Damage (ie. physical damage to the hotel)but caused by damage to the City/lack of demand are recoverable under the Loss of attraction and Prevention of Access extensions...'*

Adjusters dealing with claims under UK wordings should continue to exclude the impact of wide area damage when considering loss arising from widespread perils. Care should be taken when looking at other (non UK) policies, which may cover interruption flowing from loss rather than Damage. In those cases, the particular wordings should be considered on their merits.

**BI SIG Committee**  
**26.07.2010**