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United States District Court for The District Of South Carolina Addressed Civil Authority Coverage Extension

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In *Kelاهر, Connell & Conner, P.C. v. Auto-Owners Ins. Co.*, No. 4:19-CV-00693-SAL, 2020 WL 886120 (D.S.C. Feb. 24, 2020) the United States District Court for the District of South Carolina evaluated coverage under a civil authority provision in a business interruption insurance policy in the context of an evacuation order issued by the Governor of South Carolina prior to landfall of Hurricane Florence. In light of the evacuation order the insured law firm closed its offices and thereafter submitted a claim for its asserted business losses suffered as a result of the closure. In response, Auto-Owners denied the claim on the grounds that the loss did not fall within the terms of the Civil Authority Coverage Extension. In particular, Auto-Owners asserted that because the loss was not because of damage or destruction of an adjacent property, the requirements of the Civil Authority Coverage were not satisfied. As a result of the denial, the insured filed a declaratory action alleging breach of contract, breach of contract accompanied by fraudulent act, and bad faith refusal to pay insurance benefits.

The Civil Authority Coverage Extension provided coverage for loss “which is a direct result of an interruption of the business covered by this policy because access to the described business premises is prohibited by order of civil authority because of damage or destruction of property adjacent to the described premises by the perils insured against.” As stated by the Court, the dispute centered on whether the phrase “because of” following “order of civil authority” unambiguously requires the civil authority order to have a connection, link, or nexus to existing damage or destruction of adjacent property when it is issued.

In arguing in favor of coverage, the insured asserted that a latent ambiguity existed in the provision because “[i]n attempting to apply the words of the Policy to the subject, there is ambiguity in when the damage or destruction of property must occur.” Stated another way, the insured argued that a reasonable interpretation of the operative language was that coverage existed so long as adjacent property was damaged at any point in time, even after the evacuation order issued. Despite this clever argument, the Court found that the language of the policy was unambiguous and held that the phrase “because of” by its plain terms, necessitates the existence of property damage or destruction at the time the civil authority order is issued. As there was no evidence in the record that Hurricane Florence damaged any property before the Governor issued the evacuation order, the Court granted Auto-Owners’ Summary Judgment Motion.