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GREATEST RECENT HITS IN THE WORLD OF PROPERTY COVERAGE

I. INTRODUCTION

II. EXCLUSIONS: WATER RELATED

A. FLOOD EXCLUSION; SURFACE WATER EXCLUSION; INTERIOR RAIN EXCLUSION

- ***Hendy v. Maryland Cas. Co*., 2016 WL 3962599 (Ky. Ct. App. July 22, 2016):**
  The court considered whether an exclusion for "flood" and "surface water" barred recovery for damages from surface water flooding caused by a collapsed drainage tile on an adjacent property under construction. The trial court granted summary judgment to the insurer. On appeal, the insured argued that the policy covered loss from the "Back-Up of Sewers and Drains." The court sided with the insurer, explaining that the exclusion applied regardless of any other contributory or concurrent event. Thus, the "Back-Up of Sewers and Drains" language was irrelevant, as it was "uncontroverted that surface water entered [the] building resulting in damages."

- ***Hudson Enterprises, Inc. v. Certain Underwriters at Lloyd's London Ins. Companies*, No. 4:15-CV-12-DPM, 2016 WL 3030164 (E.D. Ark. May 25, 2016):**
  The court held that a "flood" exclusion could apply to water damage caused in part by excessive rain. The insured had argued that the policy was ambiguous insofar as it did not define "flood." The court disagreed, concluding that photos of a river's overflow established that a "flood" had occurred in the ordinary sense of that term.

- ***Divine Motel Group, LLC v. Rockhill Insurance Company*, 2016 WL 3902041 (11th Cir. July 19, 2016**):
  The court held that an interior-rain-damage exclusion precluded coverage for Tropical Storm Debby damage. The exclusion contained an exception that would apply if "[t]he building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain . . . enters." Although the insured argued that the storm damaged the building's roof and walls through which the water entered, the insured, according to the court, failed to point to any evidence to support that view. The court also noted that the insurer's adjuster observed "three areas of the roof which were pulled up from the membrane," and that the insurer's engineer had observed deteriorated sealants and other similar conditions of the roof that led him to

conclude allowed the rain to enter. The Court also noted that the insurer's engineer further opined that these openings existed prior to the storm, and that he had "based this conclusion on the weathering patterns surrounding the openings and the "distinct lack of wind-related damage" to the roof as a whole, such as heavier patterns of damage to the edges of the roof, torn or missing portions of cap sheet, and missing or torn away gutters and downspouts." The Court also noted an appraisal that had been done nearly three months prior to the storm and that reported the "poor condition" of the building, items of deferred maintenance and damage, and the need for repair or replacement of the roof. The Court rejected the Insured's argument that the proffered evidence on the cause of the roof damage amounted to a "mere scintilla that was insufficient to survive summary judgment," and affirmed the trial court's ruling in favor of the insurer.

B. WATER BELOW SURFACE EXCLUSION; CONTINUOUS SEEPAGE EXCLUSION

- ***Bull v. Nationwide Mut. Fire Ins. Co.*, 824 F.3d 722 (8th Cir. 2016):**
  The court held that an exclusion for loss resulting from "water or water-borne material below the surface of the ground, including water or water-borne material which exerts pressure on, seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool, or other structure" precluded coverage for damage from water that leaked from a buried pipe located beneath the garage-floor slab of the insured's home. The insured argued that the exclusion should apply only to water from a natural source, not a pipe. The court concluded that the insured's interpretation could not be correct without adding an unwritten, implicit limitation, noting that "breadth and ambiguity are not synonymous."

- ***Power v. State Farm Fire & Cas. Co.*, 193 So. 3d 471 (5th Cir. 2016)**:
  The court held that an exclusion for loss caused by "continuous or repeated seepage or leakage of water . . . which occurs over a period of time" precluded coverage for damage from a water leak from a copper plumbing elbow. The court rejected the insured's argument, which was that the exclusion was ambiguous insofar as it failed to identify the specific "period of time" over which the seepage/leakage had to occur.

C. BACK UP, OVERFLOW EXCLUSION

- ***Eagle W. Ins. Co. v. SAT, 2400, LLC*, 2016 WL 2939096 (W.D. Wash. May 20, 2016):**
  The court held that an exclusion for "damage caused by or resulting from" any "water that backs up or overflows from a sewer, drain or sump" did not apply to an insured's claim for interior damages relating to rain that had overwhelmed an apartment's rooftop drainage system and leaked through plumbing vent pipes at their joint collars. According to the court, there was no evidence that the rainwater had overflowed *from* a sewer, drain or sump; rather, a clogged drain was unable to effectively divert water.

III. EXCLUSIONS: NON-WATER RELATED

A. FAULTY WORKMANSHIP EXCLUSION

- ***Taja Investments LLC v. Peerless Ins. Co.*, 2016 WL 3951406 (E.D. Va. July 21,**

2016):
The court held that a "faulty workmanship" exclusion barred recovery for collapse-related damage that occurred while the insured's basement was being renovated. The collapse occurred during the insured's excavation of a "crawl space" and, according to the court, the exclusion applied because the collapse was caused by the insured's failure to install "underpinning" during the excavation. The court explained that, although some polices exclude only an insured's *negligent* workmanship, here the policy excluded "any act, defect, error, or omission (negligent or not) relating to . . . construction [or] workmanship." The court also held that an earth movement exclusion applied.

- ***Houston Specialty Ins. Co. v. Meadows W. Condo Ass'n,* 640 F. App'x 267 (5th Cir. 2016):**
The court held that there were issues of material fact that had to be resolved to determine whether an exclusion for "faulty, inadequate or defective" workmanship applied to costs associated with reconfiguring flex duct work damaged as a result of a fire in two units of an eighteen building 124-unit condominium. The fire department had determined that the layout of the duct work could have contributed to the fire, and therefore directed the insured was to address the serious fire hazard caused by the layout of the ductwork. The court noted that, although the municipal officials did not describe the flex duct work as defective and did not commit to an exact cause of the fire, their observations "could allow a reasonable fact-finder to conclude that a defect existed in the Property and the Exclusion thus applied."

B. CORROSION EXCLUSION

- ***Lantheus Med. Imaging, Inc. v. Zurich Am. Ins. Co.*, 2016 WL 3006869 (2d Cir. May 25, 2016):**
The court held that a corrosion exclusion precluded CBI coverage following corrosion and pitting damage that occurred to property of one of the insured's supplier. The insured had argued that the corrosion exclusion did not apply because the ordinary meaning of corrosion is a "gradual process" that does not occur rapidly. The court, however, explained that the damage took at least twenty-nine days to occur (that is, taking the facts in the light most favorable to the insured) and that, thus, the damage fell squarely within the policy's corrosion exclusion, even if a "gradual process" were required.

C. CONTAMINANTS & POLLUTANTS EXCLUSION

- ***PQ Corp. v. Lexington Ins. Co.*, 2016 WL 4063149 (N.D. Ill. July 29, 2016):**
The court held that an exclusion for "loss or damage caused by, resulting from, contributed to or made worse by actual, alleged or threatened release, discharge, escape or dispersal of CONTAMINANTS or POLLUTANTS, all whether direct or indirect, proximate or remote or in whole or in part caused by, contributed to or aggravated by any physical damage insured by th[e] policy" did not apply to a loss caused by discoloration of sodium-silicate products that its insured stored in a warehouse it operated. The court explained that this damage was not "caused by pollution in the 'traditional sense,'" and further that the purpose of the exclusion required a discharge of hazardous substances into the environment (land, water, or

atmosphere). Here, the damage was caused neither by contaminants that escaped the building nor by pollutants that entered the warehouse from the land, water, or atmosphere. Thus, the exclusion did not apply.

D. MYSTERIOUS DISAPPEARANCE EXCLUSION

- ***St. Paul Fire & Marine Ins. Co. v. Britt*, 2016 WL 360654 (Ala. Jan. 29, 2016):**
  The court held that an exclusion for loss resulting from "mysterious disappearances" precluded coverage for a sailboat that had been lost at sea. Although the policy did not define the term "mysterious disappearance," the court relied on precedent defining the term as "any disappearance or loss under unknown, puzzling or baffling circumstances which arouse wonder, curiosity, or speculation, or circumstances which are difficult to understand or explain." The court found that the exclusion plainly applied in this case and rejected the insured's attempt to distinguish the previous cases on the ground that they all involved thefts. The court saw "no reason why the common, everyday meaning of the phrase 'mysterious disappearance' should vary depending on whether the insurance policy in which it appears is a theft policy or an all-risk policy, or on whether the policy provides or excludes coverage for mysterious disappearances."

E. OTHER EXCLUSIONS

- ***Cincinnati Ins. Co. v. Drenocky*, No. 1:15-CV-762, 2016 WL 3633521 (M.D. Pa. July 7, 2016):**
  This case arose out of a claim for water damage to a residence discovered during the replacement of windows. The insureds had made claim to their property carrier upon discovery of the water damage after unsuccessfully seeking recovery in litigation for construction defects including improper window installation lacking a vapor barrier or flashing causing water seepage from the construction company that built the residence (who had filed bankruptcy). The insurer denied the claim on the bases of exclusions for defective workmanship, loss caused by "[c]onstant or repeated seepage . . . of water," loss caused by neglect of an insured, and fraud and concealment, as well as based on the known loss doctrine. The court held that there is a disputed issue of material fact as to the cause and timing of the water damage because there are three separate theories. Additionally, the court held that the statement made by the insured to the insurer denying prior knowledge of a problem was inaccurate, noting however that the intentional nature of the statement remained a genuine dispute.

IV. VACANCIES

A. VACANCY & VACANCY-RELATED EXCLUSIONS

- ***R&G Investments & Holdings, LLC v. Am. Family Ins. Co.*, 2016 WL 3208875 (Ga. Ct. App. June 9, 2016):**
  The court held that a vacancy exclusion applied to part of a claim for vandalism damage to an insured's residential apartment building complex. As to the covered part of the claim, the court explained that the building at issue was under renovation and, therefore, not "vacant" within the meaning of the vacancy exclusion at the time

of the vandalism. As to the excluded part, the court agreed with the insurer, presumably because the occupied unit at issue did not meet a 31 percent square footage requirement and, thus, that it was "vacant" at the time of loss.

- ***Kut Suen Lui v. Essex Ins. Co.*, 375 P.3d 596 (Wash. 2016):**
  The court held that damage from a frozen sprinkler pipe burst (that occurred less than sixty days after a vacancy began) was barred by an endorsement that: (1) barred recovery while a building was vacant or unoccupied beyond a period of sixty consecutive days and (2) limited recovery from inception for any vacancy or unoccupancy to specified causes of loss other than water damage. The court held that "[r]eading the endorsement's two paragraphs together, the average insured would understand that the endorsement alters the underlying insurance policy to the extent that when a building becomes vacant, the policy provides limited coverage and, after a 60 consecutive day vacancy, the policy provides no coverage." The court also specifically found that, the building owners' maintenance of a continuous physical presence at the property did not preclude a finding of "vacancy" within meaning of policy, which restricted coverage for property losses in vacant buildings and defining a building as vacant unless at least 31% of total square footage was rented to a lessee or sub-lessee to conduct its customary operations and/or used by the building owner to conduct customary operations.

- ***Jugan v. Econ. Premier Assurance Co.*, 2016 WL 3632724 (E.D. Pa. July 7, 2016):**
  The court found that a material fact had to be resolved to determine whether a vacancy exclusion applied to a claim for water damage resulting from the freezing of a dishwasher valve. There was no dispute that the insureds were frequently absent from the location for prolonged periods of time, and that, during one such absence, a frozen dishwasher valve broke and caused water damage to the house. The vacancy exclusion's application turn on whether the house was "unoccupied," but the policy did not define that turn, nor did it prescribe a specific number of days of unoccupancy beyond which the occupancy requirement could not be satisfied. Thus, the court held that this presented a question for a jury to resolve.

- ***Dougherty v. Allstate Prop. & Cas. Ins. Co*., No. CV 14-7270, 2016 WL 2593848 (E.D. Pa. May 5, 2016)**:
  In *Dougherty*, the court considered whether a maintenance exclusion precluded coverage for the insureds claim for a plumbing leak causing water damage. At the time of the loss, the property was unoccupied and being marketed for sale. The insurer's engineer concluded that the furnace had failed due to a severely clogged nozzle, which enabled the pipes to freeze and crack. Accordingly, the insurer denied the claim under the policy's exclusions for freezing of plumbing systems during vacancy and faulty, inadequate or defective planning, construction or maintenance. The insured filed suit and both parties moved for summary judgment. The court granted the insurer's motion, finding ample evidence to support Allstate's argument that the incident was attributable to the insured's own failure to maintain the furnace and noting that the insured's own expert had told the insured that the furnace was in dire need of service. The court also rejected the insured's argument that there was sufficient record evidence for a reasonable juror to conclude that the discharge of water was the triggering event and that the furnace malfunctioned as a result.

- ***Pazianas v. Allstate Ins. Co.*, 2016 WL 3878185 (E.D. Pa. July 18, 2016)**:

  The court held that an exclusion for the "discharge, leakage or overflow from within the systems or appliances caused by freezing, while the building structure is vacant, unoccupied or being constructed unless you have used reasonable care to: a) maintain heat in the building structure; or b) shut off the water supply and drain the system and appliances" barred recovery for a claim for water damage from bust pipes while an insured was away from the premises for several months. The insured argued that he had set the thermostat at a reasonable temperature, and that he had asked his daughter to check on the property, and that he intended to be gone only two months. The court, however, concluded that those efforts were insufficient because the insured had failed to change the batteries in the thermostat and shut off the water to his property before he left. Under the circumstances, according to the court, summary judgment for the insurer was warranted, as no reasonable juror could find that the insured had used reasonable care to maintain heat in the Property during its vacancy.

B. OTHER VACANCY ISSUES

- ***Am. Safety Indem. Co. v. Fairfield Shopping Ctr., LLC*, 2016 WL 3878496 (N.D. Ala. July 18, 2016)**:

  The court held that coverage was void as to an insured's claim for theft and vandalism to a vacant commercial building on the basis that the insured had made misrepresentations in its application for coverage. The insurer had issued a policy to the insured effective September 15, 2010 but cancelled it effective February 2, 2011, after the insured failed to respond to repeated requests for an inspection. Subsequently, the insurer learned of the insured's pending bankruptcy, and it also learned the electrical and water services were turned off at the property in June 2010. The insurer would not have issued the policy if it knew that the insured was in bankruptcy at the time it submitted its application, or if it knew there was no power and, thus, no active alarm system with central station monitoring or fire suppression system at the Property. Thus, coverage was void as to the insured, though the court reached a different conclusion as to the insured's mortgagee, who was unaware of the misrepresentations.

V. TRENDS

A. THE "PHYSICAL DAMAGE" REQUIREMENT

• ISSUE:

A basic requirement for first-party property coverage is direct "physical" damage, a term that is "widely held to exclude alleged losses that are intangible or incorporeal, and, thereby, to preclude any claim against the property insurer when the insured merely suffers a detrimental economic impact unaccompanied by a distinct, demonstrable, physical alteration of the property." 10A Couch on Insurance § 148:46 (West 3d ed. 1998) (footnotes omitted).

• TREND:

Over the last few years, there have been a number of efforts by insureds to argue that

the insured's lost ability to *use* its physical property/building should be considered sufficient to meet a "physical" damage requirement. Additionally, insureds also have begun arguing that "physical" damage requirements may be met solely on the basis of an overall lack of aesthetic uniformity.

• **CASES**:

Phoenix Ins. Co. v. Infogroup, Inc., No. 1:13-cv-00005, 2015 WL 7755976 (S.D. Iowa Nov. 30, 2015) (holding that an insured, who incurred relocated costs after being warned that a nearby river might overflow, failed to show that the mere threatened loss of use of its facilities had met the policy's "physical" damage requirement; the court explained that a "physical" loss is a "material loss amounting to something greater than the threat of loss, even if that loss is tangential or minimal," and that the "mere loss of use does not constitute physical loss or damage," even though "a loss of use may, in some cases, entail a physical loss")

Or. Shakespeare Festival Assoc. v. Great Am. Ins. Co., No. 1:15-cv-01932-CL, 2016 WL 3267247 (D. Ore. June 7, 2016) (holding that smoke in the air meets a "physical" damage requirement, and that a theater therefore could recover for lost income for performances that were cancelled on the basis of bad air quality relating to smoke from nearby wildfires; the court took the position that, "while air may often be invisible to the naked eye, surely the fact that air has physical properties cannot reasonably be disputed," and that even though the claimed physical damage "was not structural or permanent, the property experienced a loss of 'essential functionality'")

Goldstein v. Trumbull Ins. Co., No. 652633 2013, 2016 WL 1324197, at *12 (N.Y. Sup. Ct. Apr. 5, 2016) (holding that pre-emptive building closures during the approach of a hurricane did not constitute "physical" damage, even though the insured was unable to use the buildings in question at those times)

Mellin v. N. Sec. Ins. Co., Inc., 167 N.H. 544, 550-51, 115 A.3d 799, 805 (2015) (holding that claimed odors of cat urine were sufficient to meet the "physical" damage requirement)

Great Plains Ventures, Inc. v. Liberty Mut. Fire Ins. Co., No. 14-CV-1136-JAR, 2016 WL 590207 (D. Kan. Feb. 11, 2016) (holding that hailstorm-related dents in metal roofs met a "physical" damage requirement, even though the dents were merely cosmetic in the sense that they did not affect the roofs' ability to function or overall durability)

Gregory Packaging, Inc. v. Travelers Property Casualty Co. of America, No. 2:12-cv-04418 (WHW)(CLW), 2014 WL 6675934, at *5 (D.N.J. Nov. 25, 2014) (holding that, following an ammonia gas leak in the insured's juice packaging facility, the intangible presence of ammonia, which fully had to dissipate from the air before the insured could use the facility, was sufficient to meet a "physical" damage requirement, even though there was no physical alteration to the insured's property; stating that some courts have found that "property can sustain physical loss or damage without experiencing structural alteration" such as "when it loses its essential functionality")

Great Am. Ins. Co. of N.Y. v. The Towers of Quayside No. 4 Condom. Assoc., No. 15-CV-20056, 2015 WL 6773870, at *3 (S.D. Fla. Nov. 5, 2015) (refusing an insured's attempt to recover for undamaged portions of a building; rejecting the argument that "the measure of recovery under the policy must be determined from the perspective of damage to the building as a whole, that the building as a whole suffered direct physical damage from water, and that the policy covers all costs necessary to restore the building to its pre-loss, aesthetically uniform condition")

Cedar Bluff Townhome Condom. Ass'n, Inc. v. Am. Family Mut. Ins. Co., 857 N.W.2d 290, 294-96 (Minn. Dec. 17, 2014) (holding that an insurer must replace every siding panel on an insured's buildings – even though only some of them were damaged – to avoid a color mismatch between new and existing siding following a hailstorm that damaged at least one panel on each building; the parties were unable to find replacement panels in a color reasonably matching the existing ones, and the court concluded that a color mismatch would constitute a "physical alteration" to the buildings as a whole such that the insured was "entitled to have all of the siding panels . . . replaced," including the undamaged ones)

B. "ENSUING LOSS" EXCEPTIONS TO EXCLUSIONS

• **ISSUE**:

The scope of a peril-specific exclusion that contains an exception stating that the exclusion does not apply to certain "ensuing" losses. Historically, as New York's highest court recently explained, "the ensuing loss exception preserves coverage for insured losses, such as the fires after the San Francisco earthquake, [but] does not create a 'grantback' through which coverage may be had for the original excluded loss, whether it be an earthquake, a design defect, or any other excluded cause of loss." Platek v. Town of Hamberg, 2015 WL 685726, 2015 N.Y. Slip. Op. 1483, at 9 (N.Y. Feb. 19, 2015) (internal quotation marks, brackets, and citation omitted). Courts widely agree, in effect, that insureds seeking to rely on an exclusion's exception for "ensuing" losses must prove that, after the excluded peril occurred, there was a separate, independent, and non-excluded peril that, on its own, went on to cause the "ensuing" losses at issue.

• **TREND**:

Now that proof of a separate, independent, and non-excluded peril is becoming increasingly accepted and established, rather than asserting that there is no such requirement, insureds now have begun asserting that they have met that requirement in cases where, previously, the "peril" at issue might have been assumed to be part of (rather than separate from) the original excluded peril, or else may have been considered a non-peril entirely.

• **CASES**:

Nat'l R.R. Passenger Corp. v. Arch Specialty Ins. Co., No. 14-CV-7510 JSR, 2015 WL 4940568, at *8 (S.D.N.Y. Aug. 3, 2015) ("For loss to constitute 'ensuing loss'

from flood, the flood must cause some sort of damage that, in turn, creates a separate damage-causing agent that brings about 'ensuing loss.' [citation] Here, the damage from the flood did not give rise to a different type of peril; rather, one aspect of the flood of brackish seawater – the inundation of salt – was left behind and it caused damage. This may have been subsequent to the moment of the influx of water, but it was not subsequent to loss caused by the peril of flood: it was a part of those losses.")

Performing Arts Cmty. Improvement Dist. v. Ace Am. Ins. Co., No. 4:13-cv-00945, 2015 WL 3491292, at *6 (W.D. Mo. June 3, 2015) ("If a defectively designed building collapses, one does not characterize the effect of gravitational forces as a distinct and separate event, and the cost of replacing the collapsed building is not an ensuing loss. Similarly – as here – if a defectively designed retaining wall fails to retain the pressure it was intended to retain, one does not characterize the pressure as a distinct and separate event.")

Binghamton-Johnson City Joint Sewage Bd. v. Am. Alt. Ins. Corp., No. 3:12-cv-0553 (GTS/DEP), 2015 WL 2249346, at *20 (N.D.N.Y. May 13, 2015) (rejecting an insured's attempt to argue that the non-excluded peril was "operating forces and varying loads and forces," which amounted "essentially [to] relying on the effect of gravity over time . . . and treating the force of gravity over time as analogous to fire, wind, snow, and falling trees"; according to the court, "unlike fire, wind, snow and falling trees (which are not omnipresent in the world), the force of gravity over time is omnipresent in the world," and that relying on it would "broaden the [ensuing loss provision] so that it nearly swallows the [exclusion at issue]")

C. "STACKING" MULTIPLE SUBLIMITS

• **ISSUE**:

Whether a flood or other peril-specific sublimit caps recovery not only for property damage, but also for time-element losses from the peril, despite sublimits specific to those time-element coverages. Also can come up with respect to multiple peril-specific sublimits (e.g., a hurricane causes water damage and insured says named storm sublimit is not an overall cap and is not eroded at the same time as flood sublimit); or multiple time-element coverage sublimits (e.g., a fuel supplier shuts down, and insured says CBI sublimit is not an overall cap that is eroded at the same time as service interruption sublimit).

• **TREND**:

Although the legal outcomes are wording specific, insureds are increasingly raising "stacking" arguments in matters where, in the past, this issue likely would not have been brought up.

• **CASES**:

Orient Overseas Assocs. v. XL Ins. Am., Inc., No. 652292 2013, 2016 WL 2770278, at *10-12 (N.Y. Sup. Ct. May 11, 2016) (relying on various specific provisions to reject an insured's effort to recover in excess of a flood sublimit for flood-related

income losses and holding that the insured could not "stack" the flood sublimit on top of a separate, higher sublimit specific to civil authority coverage; explaining that the insured's civil authority losses "would not have occurred had there not been storm surge flooding," and that this "means the Civil Authority loss was caused by flood and is subject to the flood sublimit")

Oxford Realty Grp. Cedar v. Travelers Excess & Surplus Lines Co., No A-0342-14T3, 2016 WL 936934 (N.J. App. Div. Mar. 14, 2016) (per curiam) (holding that an insured was entitled to recover for debris removal costs in excess of a flood sublimit, even though a flood had caused the debris removal costs; debris removal appeared in the policy as an "additional coverage" that has a specific sublimit of its own, and the court concluded that the flood sublimit, which applied to damage "resulting from Flood to buildings," thereby could not be applied to anything that is not itself flood damage to a building and regardless of whether the damage had been caused by a flood)

Fed.-Mogul Corp. v. Ins. Co. of the State of Penn., No. 12-12005, 2015 WL 5876731, at *4(E.D. Mich. Oct. 8, 2015) (allowing insured to recover in excess of a flood sublimit for time-element losses from flood where the flood definition referred to physical events, such as storm surges, and did not explicitly refer to non-physical losses resulting therefrom; "Here, by the plain terms of the definition and the flood coverage provision, the term 'flood' refers only to physical loss or damage.")

Lion Oil Co. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA, No. 1 13-cv-01071-SOH (W.D. Ark. Nov. 2, 2015), ECF Doc. 217, at 7-8 (holding that an insured could recover for one type of income loss caused by one event for up to the combined total amount of the CBI sublimit plus the service interruption sublimit; "The policies at issue here do not contain an anti-stacking provision. There is no language that restricts the number of coverage grants or sub-limits that apply to a given occurrence.").

El-Ad 250 W. LLC v. Zurich Am. Ins., 988 N.Y.S.2d 462, 466-67 (N.Y. Sup. Ct. 2014) ("[T]he expression 'all losses or damages arising during [a flood]' clearly does not exclude non-physical losses."; "Nor does any portion of the endorsement state that the delay in completion's $7 million sublimit is not subject to the flood loss $5 million aggregate limit . . . ."), aff'd, No. 652964 13, 2015 WL 4078762 (N.Y. App. Div. July 7, 2015) ("Reading the coverage in such a way as to find that flood losses do not apply to delay in completion losses would render the flood limit meaningless with respect to that coverage.")