Claims Professionals Go to the Movies (Take 1): Is Your Property Coverage Ready for Blockbuster Disasters?

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I. Introduction

Imagine a world where catastrophic events may arise not only from natural or conventional human causes but also from the actions of superheroes and supervillains. Now join us in exploring extreme fictional scenarios brought to life by movies, to examine real-world principles of first-party property insurance. This paper explores how real-world property insurance policies may respond to large-scale destruction caused during superhero-related incidents, focusing on covered causes of loss, a few key exclusions that may bar recovery, and the treatment of civil authority-based business interruption losses.

II. Covered causes of loss.

First-party property insurance policies typically cover "direct physical loss of or damage to" insured property when caused by a covered peril. Policies are generally written on either a "named perils" basis or an "all-risk" (or "open perils") basis.

Under an all-risk policy, losses arising from superhero battles—such as structural collapse from kinetic force, fire resulting from energy weapons, or water damage from ruptured infrastructure—would generally be covered unless specifically excluded.

The threshold issue is whether the damage constitutes "direct physical loss," which courts have generally interpreted to require a tangible, material alteration of the property. See e.g. *Newman Myers Kreines Gross Harris, P.C. v. Great Northern Ins. Co.*, 17 F. Supp. 3d 323 (S.D. N.Y. 2014) (policy that covered "direct physical loss or damage" required some form of actual, physical damage to the insured premises, inability to access the property was in sufficient); T*urek Enterprises, Inc. v. State Farm Mutual Automobile Insurance Company*, 484 F. Supp. 3d 492 (E.D. Mich. 2020) (Insured's business interruption losses were not result of "accidental direct physical loss to Covered Property" within meaning of all-risk businessowners policy; insured failed to demonstrate tangible damage to covered property). See also *Mudpie, Inc. v. Travelers Casualty Insurance Company of America*, 15 F.4th 885, 891 (9th Cir. 2021)("Direct physical loss contemplates an actual change in the insured property … occasioned by an accident or other fortuitous event directly upon the property causing it to become unsatisfactory. In other words, for loss to be covered, there must be a "distinct, demonstrable, physical alteration" of the property.").

However, courts do not always require a tangible, physical alteration. Some courts have found the requirement for "direct physical loss or damage" was satisfied in the absence of tangible injury. For example, government regulations rendered cereal unfit for sale resulting in "an impairment of function and value" of insured property. *General Mills, Inc., v. Gold Medal Ins.,* 622 N.W. 2d 147 (Feb 6, 2001). In reaching its decision, the court cited to *Sentinel Management Co. v. New Hampshire Ins. Co.,* 563 NW2d 296 (Minn. App. 1997) for the proposition that "direct physical loss can exist without actual destruction of property or structural damage to property, it is sufficient to show that property is injured in some way." In *Sentinel,* it was held that the function of a residential apartment building, to provide safe housing, was seriously impaired or destroyed by the presence of asbestos fibers, although the building itself did not suffer a "tangible injury."

Just recently, three courts addressed coverage for smoke and soot from wildfires in California with differing results. The core question addressed was whether the smoke and soot constitute "direct physical loss or damage." In *Bottega, LLC v. Nat. Sur. Corp,-Chicago, IL,* 2025 WL 71989 * 4 (N.D. Cal. January 10, 2025), the United States District Court for the Northern District of California found coverage was triggered where there is "some *physicality* to the loss … of property – e.g. a physical alteration, physical contamination, or physical destruction." The *Bottega* Court recognized case law finding that contamination of a structure that seriously impairs or destroys its function may qualify as direct physical loss. *Id.* citing to *Inns-by-the-Sea v. California Mut. Ins. Co.*, 71 Cal. App. 5th 688, 701-702 (2021) (collecting cases in which "the presence of noxious substances and odors ... rendered real property uninhabitable or unable to be used as intended"); *see also Oregon Shakespeare Festival Ass'n v. Great Am. Ins. Co.*, No. 1:15-CV-01932-CL, 2016 WL 3267247, at *9 (D. Or. June 7, 2016), *vacated by agreement*, No. 1:15-CV-01932-CL, 2017 WL 1034203 (D. Or. Mar. 6, 2017) (concluding harmful air quality inside the insured theater resulting from wildfire smoke constituted physical damage, even though the property did not incur any permanent or structural damage). Since smoke physically alters property, the Court analogized it to damage from asbestos contamination and distinguished it from the many Covid-19 cases, where no physical alteration was demonstrated.

In *Maxus Metro, LLC v. Travelers Prop. Cas. Co. of Am.,* 163 F.4th 441 (8th Cir. 2025), the Eighth Circuit also found that soot damage qualifies as physical damage because it is "directly material, perceptible, or tangible."

However, the California Court of Appeals reached a different decision in *Gharibian v. Wawanesa Gen. Ins. Co.,* 108 Cal. App. 5th 730, 320 Cal. Rptr. 3d (February 7, 2025), review denied (April 30, 2025). There, homeowners sought coverage when ash and soot from the wildfires settled on their home and the smoke odors infested the home, although the fire did not reach the home. The court held that in order for there to be a direct physical loss to property a "distinct, demonstrable, physical alteration" must occur. Because the debris, soot and ash could be cleaned or removed from the property it did not "alter the property itself in a lasting and persistent manner" and was therefore not covered.

III. Potentially Applicable Exclusions

Even under broad all-risk policies, there are a number of exclusions that may limit or preclude recovery for superhero-related damage.

A. War and Hostile Action Exclusions

Insurers may argue that large-scale destruction involving organized, government-affiliated superheroes falls within "war" or "hostile/warlike action" exclusions. However, courts traditionally interpret these exclusions narrowly. Spontaneous or localized conflicts—even if highly destructive—may not qualify as war absent sovereign involvement or formal hostilities.

In *Merck & Co., Inc. v. Ace American Ins. Co.,* 475 N. J. Super 420, 293 A.3d 535 (NJ App. 2023), the court considered a hostile actions exclusion in the context of a cyberattack. In doing so, the Court addressed the history of the "war exclusion" noting that the phrase "hostile or warlike action" has appeared in war exclusions since at least the 1950s. The court also noted these exclusions have never been applied outside the context of a clear war or concerted military action.

Based on the limited case law addressing such exclusions, we can expect the word "war" to be given its ordinary meaning that is "actual hostilities between the armed forces of two or more nations or states…." See e.g. *Stanbery v. Aetna Life Ins. Co.,* 26 N.J. Super. 498, 500, 98 A.2d 134 (Law Div. 1953). We can also expect that Courts will enforce clear exclusions to limit liability. In I*nt'l Dairy Eng'g Co. of Asia v. Am. Home Assurance Co.,* 352 F. Supp. 827, 828 (N.D. Cal. 1970), aff'd, 474 F.2d 1242 (9th Cir. 1973), the insured operated a milk processing plant about five miles east of Saigon, Vietnam. It sought coverage for damage to its property destroyed by a fire caused by the landing of an aerial parachute flare dropped by an unidentified airplane. The exclusion at issue provided in pertinent part:

> Notwithstanding anything contained to the contrary, this insurance is ... warranted free from the consequences of hostilities or warlike operations (whether there be a declaration of war or not), but this warranty shall not exclude ... fire ... unless caused directly ... by a hostile act by or against a belligerent power.

The exclusion was held to apply because the flare that caused the fire "was obviously dropped in connection with military operations." *Id.* at 831.

However, the hijacking and explosion of Pan Am Flight 73 was not within the scope of the all-risk policy's war exclusion. In so holding, the Second Circuit reasoned that war has historically been defined to include only hostilities carried on by governmental entities and here "there was no basis whatsoever for any claim that the insured Pan American was involved in a warlike operation." *Id.* at 1017. See also *Universal Cable Prods., LLC v. Atl. Specialty Ins. Co.*, 929 F.3d 1143, 1146-47, 1160 (9th Cir. 2019) (holding that exclusions for "war" or "warlike action" did not apply to damages incurred by insured due to Hamas firing rockets from Gaza into Israel because Hamas was not acting as a de jure or de facto sovereign at the relevant time); *Holiday Inns, Inc. v. Aetna Ins.* Co., 571 F. Supp. 1460, 1463, 1503 (S.D.N.Y. 1983) (declining to apply exclusion for "[w]ar, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, insurrection, revolution, conspiracy, military or usurped power," where damages to insured's Beirut hotel were caused by "a series of factional 'civil commotions,' of increasing violence" rather than a war between sovereign or quasi-sovereign states).

B. Acts of Government Exclusion

Damage caused by government-authorized destruction of property (e.g., to contain a threat) may trigger this exclusion. For instance, if authorities order the demolition of a bridge to stop a supervillain, resulting losses may be excluded.

The "acts or decisions" exclusion has been criticized by commentators – and courts – for its excessive breadth. *See The Acts or Decisions Exclusion That Tried To Swallow the Policy,* https://www.irmi.com/articles/expert-commentary/the-acts-or-decisions-exclusion-that-tried-to-swallow-the-policy. ("Taken literally, this exclusion could swallow the entire coverage provided by a property insurance policy because, in almost every instance imaginable, there is some act or decision, or failure to act, in the chain of causation of every loss.").[1] That, however, has not prevented courts from applying the exclusion when governmental acts or decisions caused the harm.

The trial court granted summary disposition for the carrier and the appellate court affirmed, to deny cover for losses stemming from a city of Flint construction project in *Legal Servs. Plan of E. Michigan v. Citizens Ins. Co. of Am.*, No. 278110, 2009 WL 1175514 (Mich. Ct. App. Apr. 30, 2009). There, the coverage dispute arose with respect to an

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[1] Courts have echoed this sentiment. "The clause ... cannot be taken literally. If it were to be so taken, it would exclude coverage from all acts and decisions of any character of all person, groups, or entities. Such an interpretation would leave the insurance policy practically worthless. *St. Paul Fire & Marine Ins. Co. v. Gen. Injectables & Vaccines, Inc.*, No. CIV.A.98-07370R, 2000 WL 270954, at *5 (W.D. Va. Mar. 3, 2000), *citing Jussim v. Massachusetts Bay Ins. Co.*, 597 N.E.2d 1379, 1381–82 (Mass. App. Ct. 1992), aff'd, 610 N.E.2d 954 (Mass. 1993).

insurance policy covering the plaintiff's business premises. During the policy period, the city of Flint began a construction project that involved replacing the sidewalk and planting trees near plaintiff's building. The contractor hired by the city apparently did not put down any type of waterproofing material to cover the opened sidewalk before leaving for the Fourth of July holiday weekend. It rained very hard over the weekend, and a large amount of water — about 20 inches deep — was discovered in the insured's basement. In the coverage litigation, the court first found that the "surface water" exclusion applied. It also found that the "acts or decisions" exclusion — which excluded coverage for damage caused by "[a]cts or decisions, including the failure to act or decide, of any person, group, organization, or governmental body" — applied. The court reasoned that because the construction activity constituted an "act," any damage caused by that activity was not covered.

The Michigan Court of Appeals also found that the exclusion applied to losses that arose when the Michigan Department of Agriculture (MDA) required a recall of the insured's product. *Torres Hillsdale Country Cheese, L.L.C. v. Auto-Owners Ins. Co.*, No. 308824, 2013 WL 5450284 (Mich. Ct. App. Oct. 1, 2013). The insured's commercial property coverage policy contained an exclusion for "the failure to act or decide, of any person, group, organization or governmental body." After the MDA issued a recall of cheeses produced by the insured due to the presence of Listeria, the insured sought coverage for its losses. The insurer denied the claim on the basis of the acts or decisions exclusion. In the coverage litigation that followed, both the trial court and the appellate court held that the exclusion precluded coverage as there was no genuine question that the losses were the result of the government's actions. Although the insured tried to argue that the insurer needed to submit proofs that the losses were due to the government's recall, the court essentially found it incontrovertible that the losses were attributable to the government's actions, which included a seizure of product and an order to stop producing any more product.

See also Cytopath Biopsy Lab., Inc. v. U.S. Fid. & Guar. Co., 6 A.D.3d 300, 301 (N.Y. App. Div. 2004). There, governmental authorities had ordered the insured to shut down its laboratory after a discharge of noxious fumes caused other tenants in the building to become ill. The court found that "the real losses claimed herein resulted from refusal by the authorities to permit resumption of operations until proper permits were obtained and a more acceptable ventilation system was installed. The policy specifically disclaimed coverage for losses occasioned . . . by "Acts or decisions[,] including the failure to act or decide, of any person, group, organization or governmental body." On those facts, the court found that there "was no covered loss." *Id.*

III. Business Interruption - Civil Authority Coverage

Business interruption (BI) coverage is a critical component of recovery for commercial insureds affected by disaster events. It is designed to compensate for lost income and continuing expenses during the period of restoration following covered property damage. BI coverage generally requires direct physical loss or damage to insured property and that such loss be caused by a covered peril.

In a superhero-related event, if a business premises is damaged (e.g., destroyed storefront due to a Hulk-Smash), BI coverage would likely be triggered. However, what if the property isn't physically damaged? If access to a business is prohibited by government order due to nearby damage (e.g., a restricted zone following a supervillain attack), civil authority coverage may apply. This coverage is typically time-limited and subject to strict conditions.

Most recently during the Covid-19 Pandemic we saw businesses shuttered by stay-at-home and shelter-in-place orders making claims for civil authority coverage. But—as airlines and companies in hurricane-plagued regions have learned—even when the government issues orders grounding planes or evacuating cities, the civil authority provision does "not insure against impairment of operations that occurs simply because a civil authority prohibits access" to those operations. *Jones, Walker, Waechter, Poitevent, Carrere & Denegre, LLP v. Chubb Corp*., No. CIV.A. 09-6057, 2010 WL 4026375, at *3 (E.D. La. Oct. 12, 2010) (New Orleans law firm ordered to evacuate due to Hurricane Gustav). The policy provisions usually require that the civil authority prohibit access as a result of direct physical loss or damage to property.

Businesses interrupted by a superhero attack are likely to face a major hurdle: what is the "damage" necessary to trigger coverage? First, the civil authority provision has to be triggered by, of course, a civil authority. We can assume in the midst of a superhero destruction event, a civil authority will issue executive orders. We saw examples of this during the Covid-19 pandemic. For example, in Michigan, Governor Whitmer issued the first of many executive orders, requiring non-essential businesses to cease operations on March 23, 2020. The relevant language being:

> 4. No person or entity shall operate a business or conduct operations that require workers to leave their homes or places of residence except to the extent that those workers are necessary to sustain or protect life or to conduct minimum basic operations.

Some policyholders viewed this order, and those like it, to trigger the civil authority provision. Simply acting under a civil authority and ceasing business operations, however, is insufficient to trigger the civil authority provision for business interruption coverage. Courts have examined the civil authority provision under various insurance policies and in a number of contexts, including riots, terrorist attacks, and natural disasters.

In a couple early cases, the courts read the term "damage" broadly because the policies didn't define damage as only physical harm. *Sloan v. Phoenix of Hartford Ins. Co.*, 46 Mich. App. 46 (1973) and *Allen Park Theatre Co. v. Michigan Millers Mut. Ins. Co.*, 48 Mich. App. 199 (1973). In *Sloan*, the plaintiff operated movie theaters that were open daily until midnight. Due to riots in the Detroit metro area following the assassination of Martin Luther King, Jr., the governor issued an executive order mandating a curfew. Because plaintiff's theaters were closed for four days and required to close early on other days, the theater sought coverage under the civil authority provision of its policy. Having no physical damage or loss, the insurance company denied coverage. The Michigan Court of Appeals, however, found that the theater was entitled to coverage because the policy did not specifically state that the damage must be "physical." The policy simply provided coverage for loss caused by "damage" or destruction.

Two judges on the panel in *Allen Park* felt compelled to follow *Sloan*. The case arose out of the same circumstances, an executive order requiring "all places of amusement" in Wayne County to be closed because of rioting. The policy also did not specifically state that the damage must be "physical." The court ruled that "[i]f the insurer wanted to be sure that the payment of business interruption benefits had to be accompanied by physical damage it was its burden to say so unequivocally." The third judge on the panel wrote a lengthy dissent, pointing out that the policy as a whole clearly required physical damage.

Closer in time, many businesses, unsuccessfully, sought protection under civil authority provisions after the FAA closed airports following the attacks on 9/11. A federal court in New York, reading the policy as a whole, found that the civil authority clause required physical damage. *United Airlines, Inc. v. Ins. Co. of State of Pa.*, 385 F. Supp. 2d 343 (S.D.N.Y. 2005). The airline claimed it was entitled to coverage under the civil authority provision because of the 9/11 closures. The policy language stated that "[t]his policy insures against loss resulting directly from the necessary interruption of business caused by damage to or destruction of the Insured Locations, resulting from Terrorism[.]" Based on that language and other clauses of the policy, the court granted summary judgment for the insurer, finding that the ordinary and plain meaning of "damage" did not contemplate economic damage, but rather physical damage.

In *Paradies Shops, Inc. v. Hartford Fire Ins. Co.*, No. 1:03-cv-3154, 2004 WL 5704715 (N.D. Ga. Dec. 15, 2004), the court focused on the purpose for the exercise of the civil authority and the meaning of "direct result." The plaintiff operated gift shops in airports throughout the country. After the 9/11 terrorist attacks, the FAA issued a ground stop order. Paradies made a claim under its policy's civil authority coverage, because of its proximity to the World Trade Center, the Pentagon, and Reagan Washington National Airport. The civil authority provision permitted coverage upon a showing that the civil authority order was a "direct result of a covered loss to property away from your premises." The court held that the civil authority order was issued as a "direct result" of the threat of additional attacks, not because of the existing damage and proximity to the damaged sites.

The civil authority provision also is heavily litigated in natural disaster cases. A recent example is *Kelaher, Connell, & Conner P.C. v. Auto-Own. Ins. Co.*, No. 4:19-cv-00693, 2020 WL 886120 (D.S.C. Feb. 24, 2020). In that case, the plaintiff law firm closed its business in response to a hurricane evacuation order. The firm sought coverage under the civil authority provision of its policy. The court reasoned that coverage would be permitted only if the order was issued "because of" damage or destruction to adjacent property. The firm was unable to make that showing, and the court found that any other reason for civil authority action was insufficient.

Likewise, where the civil authority provision required "direct physical loss," the court found that it didn't cover the policyholder's economic losses from civil action to prevent the spread of mad cow disease. *Source Food Tech., Inc. v. United States Fidelity & Guaranty Co.*, 465 F.3d 834 (8th Cir. 2006). There, Source Food sought coverage for a loss to its property—Canadian beef. After a Canadian cow tested positive for mad cow disease, the USDA imposed an embargo on Canadian beef products. Source Food's beef, although prepared, was not shipped because of the USDA order. Unable to operate its business, Source Food filed a claim under its business interruption policy. The policy limited coverage to a "direct physical loss to property." Source Food argued that the USDA order was a "direct physical loss" to its property, because its beef was treated as if it was physically contaminated. Given there was no evidence the beef was physically contaminated or damaged, the court rejected Source Food's argument, ruling: "[T]o characterize Source Food's inability to transport its truckload of beef product across the border and sell the beef product in the United States as direct physical loss to property would render the word 'physical' meaningless."

Despite the clear and, somewhat, limiting language of civil authority provisions, policyholders made creative attempts to redefine the coverage in light of Covid-19. For example, a creole restaurant in New Orleans's French Quarter filed a declaratory judgment action for losses incurred from COVID-19. *Cajun Conti, LLC, d/b/a Oceana Grill v. Certain Underwriters at Lloyd's, London*, Civil District Court for the Parish of New Orleans, No. 2020-02558 (Mar. 16, 2020). Specifically, the plaintiff, whose restaurant held up to 500 guests, argued, among other things, that the governor's order banning gatherings of 250+ people would significantly impact its business. The restaurant advanced this argument, despite any direct physical loss or damage. Similarly, an upscale restaurant in the San Francisco Bay Area sought a declaratory judgment that the Napa County public health officer's order, limiting its business to take-out and delivery only is a "prohibition of access," triggering the civil authority provision. *French Laundry Partners v. Hartford Fire Ins. Co.*, Napa County Superior Court, California (Mar. 25, 2020).

Prior to Covid-19 there was little guidance as to whether the presence of a contagion or virus constitutes "physical loss or damage," for businesses seeking coverage under their business interruption insurance policies. Take *Mitchell Brothers Ice Cream, Inc. v. Cincinnati Ins. Co.*, Cuyahoga County Court of Common Pleas, Ohio, No. CV-20-931683 (Apr. 3, 2020), for example. The plaintiff there argued that because of the number of people who tested positive for COVID-19 in Cuyahoga County, its locations have suffered "direct physical loss or damage" due to the likely presence of the virus.

Ultimately, Courts across the United States largely dismissed COVID-19 civil authority claims, ruling that government-mandated shutdowns to prevent the spread of the virus did not constitute "direct physical loss of or damage to property". *Hotel Mgmt. of New Orleans, LLC v. General Star Indem. Co.*, 2022 WL 1503299 (E.D. La. May 12, 2022).

Creativity aside, the civil authority provision limits recovery. Most policies limit the amount recoverable not to exceed four weeks from the act ceasing operations. And for many businesses, that would hardly cover the business interruption a superhero destruction event would impose.

The law in most jurisdictions requires courts to honor the contract language. The purpose of insurance contracts is to protect against assumed losses. The contract comprises the parties' understanding of what is covered and when and how coverage is triggered. However, as we saw with 9/11 and Covid-19, large unanticipated events can present challenges for policy language.

Conclusion

Although superhero-related destruction is fictional, the legal and insurance principles governing such losses are grounded in reality. The large-scale property destruction the superhero narrative presents is more than a cinematic spectacle. The adequacy of existing property policies for a superhero destruction event (or any large disaster) turns on both policy interpretation and adaptation by the Courts. As with other unprecedented losses, like 9/11 and the Covid-19 pandemic, Courts may be required to determine whether extraordinary destruction events fall within the current policy coverages and/or exclusions, while insurers, in turn, may respond through more precise underwriting, tailored exclusions, or the introduction of specialized endorsements.