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The International Comparative Legal Guide to:

Insurance & Reinsurance 2018

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A practical cross-border insight into insurance and reinsurance law

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EDITORIAL

Welcome to the seventh edition of *The International Comparative Legal Guide to: Insurance & Reinsurance*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of insurance and reinsurance.

It is divided into two main sections:

Six general chapters. These are designed to provide readers with an overview of key issues affecting insurance and reinsurance work, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in insurance and reinsurance laws and regulations in 41 jurisdictions.

All chapters are written by leading insurance and reinsurance lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Jon Turnbull and Michelle Radom of Clyde & Co LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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Fire and Wire: Canadian Business Interruption Insurance in the Age of Cyber-Risk and Climate Change

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Introduction

Insurance companies and policyholders in Canada are facing new risks and challenges, as they always have. Risk resulting from cyber losses and climate change, however, are not merely incremental changes in the insurance world. Rather, they are risks that are both rapidly evolving and difficult to predict. As always in the insurance industry, new risks are met with a creative and insightful underwriting and brokering response. Innovative solutions are required. At the same time, however, existing insurance solutions provide useful foundations for managing emerging risk. Business interruption coverage is a prime example. Business interruption coverage has, traditionally, been included with first-party bricks and mortar property coverage. This insurance has been aimed at protecting the future income stream of protected entities, and has a long history of success protecting policyholders.

However, emerging and unpredictable risks like cyber-risk and climate change pose new challenges for both insurers providing business interruption coverage and their customers. Such new risks have resulted in an evolution of business interruption coverage to ensure that policyholders are protected from the uncertainty presented by modern digital business realities and a rapidly changing climate.

A. Cyber Business Interruption

Computer operations and data are at the heart of modern business. Interruption of systems or loss of data would be crippling to virtually every Canadian enterprise. With the advent of data breach, ransomware, and Distributed Denial of Service (DDoS) attacks, the primary risk of business interruption has changed from physical damage to bricks and mortar infrastructure to disruption of computer systems or loss of information. Policyholders are only just beginning to awaken to this risk, and insurers are moving quickly to insure it properly. While these emerging trends are coalescing, however, there is likely to be significant friction between policyholders with traditional first-party coverage or minimal cyber-coverage and their insurers.

This section of the article gives an outline of the problems now seen to be arising, an analysis of the coverage provided by bricks and mortar policies to cyber-losses, and identifies some of the challenges facing cyber-carriers.

1. Cyber attacks and business interruption

Since late 2016 and 2017 we have seen major cyber interruptions in the form of Distributed Denial of Service (DDoS) and ransomware attacks. These attacks, while generally resolved within hours, affected large parts of the world economy.

For example, in late 2016, the Mirai virus was used to attack Dyn, Inc., which provides internet infrastructure to many Fortune 500 companies in the United States including Starbucks, Airbnb, Amazon, Netflix, Visa and many others. The virus had propagated through tens of millions of Internet of Things (IoT) devices. At 7 a.m. on October 26, 2016 those IoT devices were directed to contact Dyn's servers, resulting in an amount of traffic that overwhelmed those servers, such that they could not serve Dyn's clients. The initial attack was resolved in about two-and-a-half hours, but two more attacks were also launched. Dyn had resolved the issue by 6:11 p.m. The total period of the attack was just over eleven hours, but many of Dyn's client's websites and portals had been affected during that time, and could not operate properly. The losses to Dyn's clients were significant.

Similarly, mid-2017 witnessed the WannaCry, Petya and NotPetya ransomware attacks. The ransomware infected many thousands of computer networks, shutting them down until either ransom was paid, or work-arounds were put into place. Again, many companies resolved their issues within hours, but some were out of service for days. Business impacts were significant. WannaCry, Petya and NotPetya are only three examples of a growing problem of ransomware. Many businesses are victims of ransomware viruses, and other forms of data breach, which require the partial or complete suspension of computer operations. Income losses are suffered as the result of such events.

Canadian businesses and other organisations have traditionally relied on first-party property coverage for protection of their earnings stream through business interruption insurance. However, that coverage is not well structured for the electronic age, as they require "direct physical loss" to covered property to trigger business interruption coverage. What direct physical loss has occurred as the result of a cyber-event?

Cyber policies are increasingly being used to fill the gap in coverage for systems or data-based business interruptions.

2. Insurance coverage for business interruption

Business interruption coverage indemnifies policyholders for income lost when damage to covered property disrupts the policyholders' business operations.[1] Traditional first-party policies require that three conditions be satisfied to trigger coverage: (1) for direct physical loss or damage; (2) of covered property; and (3) resulting from a covered cause of loss.[2] Of significance is the requirement for direct physical loss or damage to the covered property. Some

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policies have defined covered property to include exclusively "tangible property".[3] Economic loss alone is insufficient to trigger coverage under most traditional first-party insurance policies.[4]

Courts have been called upon to determine whether or not interruptions caused by cyber-attacks constitute "direct physical loss or damage" to covered and/or tangible property.[5] Does the temporary detainment of virtual information constitute physical damage for the purpose of a business interruption policy? Canadian case law has, unfortunately, shed little light on the issue. South of the border, however, several American authorities have considered similar issues.

In *America Online, Inc. v. St. Paul Mercury Ins. Co*[6] AOL had released a new version of its software to the public. Unfortunately for the internet provider, that new software caused damage to customers' computer systems and pre-existing software. A class action lawsuit was filed and settled shortly thereafter. AOL tendered the defence to their insurer, under a policy that provided coverage for "physical damage to tangible property". The insurer denied coverage and AOL sued. The Fourth Circuit Court held that damage to software did not constitute physical damage to tangible property, and as such, did not trigger coverage under the policy. In so finding, the Court created a distinction between damage to hardware and software, noting that only damage to the former would constitute physical damage to tangible property, as the latter consists only of recorded data and information.

In contrast, in *Ingram*,[7] Ingram, a wholesale distributor that relied on the use of a computer network known as the Impulse system to track its customers, products, and daily transactions, purchased a primary all-risk policy that covered "[r]eal, and personal property, business income and operations in the world wherever situated except for U.S. Embargo Countries" and insured against "All Risks of direct physical loss or damage from any cause, howsoever or wheresoever occurring, including general average, salvage charges or other charges, expenses and freight". A power outage resulted in a loss of programming information on a number of computers, which in turn resulted in a loss of connection at six locations, at which Ingram was, therefore, unable to conduct business. In coming to its conclusion on the issue of coverage, the District Court ruled as follows:

> *"At a time when computer technology dominates our professional as well as personal lives, the Court must side with Ingram's broader definition of "physical damage." The Court finds that "physical damage" is not restricted to the physical destruction or harm of computer circuitry but includes loss of access, loss of use, and loss of functionality."*

A similar result was reached in *Landmark American Insurance v. Gulf Coast Analytical Laboratories*[8] – a business interruption loss was covered in circumstances wherein the insured could no longer use its computer systems because of a virus. The court's analysis focused on the particular language used in the policy, particularly coverage for "direct physical loss … of valuable papers and records, including those which exist on electronic or magnetic media for which duplicates do not exist". Such language implied that the insurer regarded lost electronic data as a "physical loss", capable of triggering business interruption coverage.

Despite the inherent incompatibility of the foregoing decisions, each has been referenced in subsequent jurisprudence with both approval and disapproval as the case may be and, as such, the status on the physical damage requirement as it applies to data and electronic information is far from apparent.[9] It is, therefore, important for insured parties, who depend heavily on their cyber-networks, to conduct a careful review of their coverage.

In an effort at increased certainty, certain insurance providers have added specific limitations to their policies that address "electronic media and records",[10] whereas other policies specifically exclude cyber-related losses.[11] Further, even in cases where cyber-related business interruption may be covered, traditional policies often require a complete cessation of operation to trigger coverage,[12] leaving businesses exposed in the event of slowdown or brief interruption.[13]

As companies increasingly depend on the use of data and network connectivity to conduct business, including those who continue to operate traditional brick and mortar locations, reliance on traditional first-party business interruption coverage may leave many businesses at risk in the face of a cyber-attack or network shutdown. Given this heavy reliance on cyber data and services, and the uncertainty of coverage under traditional property policies, it may be time that businesses, in any industry, consider the adoption of a cyber-policy to mitigate their risk and exposure to a shutdown or diminution of production as a result of a cyber event.

3. Cyber Business Interruption Insurance and its Challenges

At the outset of any discussion of cyber policies, it must be noted that not only is there no standard form of cyber policy; there is not even a standard scope of coverage. Different policies may provide vastly different protection from one another. Some may cover business interruption, some may not. The only way to determine the scope of a cyber-policy is through review of the language employed. That said, where it exists, it can be generally stated that most business interruption coverage in cyber policies will share a common goal with such coverage found in first-party property policies: insurance for the future stream of income of the business, resulting from a covered loss.

However, the structure of such coverage in a cyber policy must differ in fundamental ways from its property-based cousin. The business interruption coverage found in traditional property policies was inherently conservative, in that it would only respond to the specific interruption occurring at covered premises resulting from physical damage to covered property caused by a covered peril. If losses were suffered that did not result specifically from the covered loss, but simultaneously with such covered loss, those losses were not recoverable under the policy.

Cyber coverage, however, must hinge on different triggering events. Generally speaking, as there is no physical damage that results from a cyber event,[14] it is difficult to say "where" a cyber loss took place, and the perils covered by cyber policies may be "specified" as opposed to "all-risk" in nature. While the purpose of business interruption coverage remains the same as between traditional insurance and cyber insurance, the structure of the coverage is different in a number of fundamental ways.

With respect to the loss itself under a cyber policy, business interruption coverage will generally be triggered if there is a necessary disruption of the insured's own systems. What, however, is the insured's "own system"? This is a particularly acute problem in the cyber world, as many digital services are outsourced. Again, different policies will treat this question in different ways. Does the insured's system include off-site servers owned by others? What if that server is leased in whole or in part to the insured? Is software and data part of the system, or must the interruption be related to hardware alone? Is it necessary that the disruption be complete, or will a partial disruption or slow-down be sufficient to trigger coverage?

With respect to the location of the loss. Given that systems are invariably linked to other computer systems through communications equipment, where does the insured's system end,

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and the third-party system begin? What connections qualify as the insured's own system? Will a loss that affects the internet, or large-scale communications system, as a whole, be covered or excluded as a catastrophic loss?

As regards the cause of loss itself, what events are sufficient to trigger coverage? Must the event be caused, in its entirety, through the malicious and volitional acts of third parties, or can an accidental event trigger coverage? That is to say, must the disruption to the insured's systems be the result of a malicious virus, hacker or DDoS attacker, or will coverage be available from shutting down a sector of the insured's system, following the accidental loss of an unsecure laptop? Must the shut-down be "necessary", or is it sufficient that the insured make a good faith decision that a disruption of computer operations is in its best interests or those of its clients?

There is significant variation in policies as to what time period the policy will cover. Cyber policies will normally reflect protection for a lost profit, through assessment of the actual lost net profit (or increased net loss) suffered. However, assessment of such loss will generally not be based on the same period as in a traditional insurance policy. Some policies insure only income lost in the period during which the disruption is ongoing. The period of interruption will generally begin within a waiting period based upon a set number of hours (often 12 or fewer), rather than days or weeks as is normally the case with traditional business interruption coverage. Once the waiting period has ended, the policy will respond to the business interruption loss. As noted, though, some cyber policies are structured so that once electronic operations are restored, the insurer will no longer pay amounts lost by the insured for the interruption to its business. Other policies, however, are more consistent with bricks and mortar business interruption, in that they cover the insured for a period of restoration, wherein an assessment of the insured's ongoing lost income following the incident is insured, taking into account the trend of the business before and after the disruption and continuing/non-continuing fixed costs. Different businesses will be better served by one policy or the other. Retail operations which may recover quickly from an outage may be better served by paying a lower premium for the limited coverage period. Other businesses that may suffer a reputational harm as the result of an outage may wish to pay more in premium to obtain restoration period coverage.

An additional consideration is whether the insured will need Contingent Cyber Business Interruption ("CBI") coverage. Although there are more than a billion websites on the internet, those websites depend on a relatively small number of companies to keep the infrastructure underlying electronic communications operating.[15] The magnitude of this dependence was demonstrated during the Dyn DDoS attack. While typical cyber policies bought by small to medium businesses do not provide CBI coverage, many of the policies provided to larger enterprises do. As a better understanding of the scope of cyber business interruption risk is gained, insurers are beginning to offer CBI cyber coverage on a more widespread basis. At the same time, such coverage is generally subject to notable restrictions. The insured must identify the specific entity whose failure will trigger the coverage. Also, insurers have sought to limit their exposure to a massive cyber event, through catastrophe exclusions. A cyber event affecting a sector of internet service or cloud provider, for example, could result in major losses globally. Insurers are generally not prepared to insure that risk.

Cyber business interruption in Canada closely resembles business interruption coverage in traditional bricks and mortar forms. There are, however, notable differences in the events required to trigger coverage, and the manner in which loss is calculated. This is a nascent area of business interruption coverage, and uncertainties remain. The risk is obvious, but the response from insurers continues to develop.

B. Climate Change

Climate change is increasingly at the forefront of the collective consciousness. Whether, and to what extent, climate change has been a factor in Canadian weather events, such as the 2016 Fort McMurray wildfires, are questions with a clear answer. The scientific community now posits with confidence that climate change will be a driving cause of the rise in global temperature and the exacerbation of weather-related disasters.[16] Weather-related events are one of the main catalysts of insurance claims.[17] Accordingly, we are likely to see a new focus on insurance coverage issues as weather continues to intensify as a result of climate change.

1. Increasing weather and risk

In each year between 1990 and 2004 there have been at least 20 weather-related events that were severe enough that they could be classified by leading reinsurers as "significant catastrophes"; only three of the years in the preceding two decades featured such weather events.[18] In addition to the increase in frequency of severe weather, weather events are now also occurring with greater intensity.[19] Climate change has already resulted in increases in ocean temperatures, with the result being an increase in the evaporation rate in the atmosphere and an increase in the intensity of cyclones and precipitation.[20] While the average number of category 4 and 5 hurricanes occurring annually in the 1970s was approximately 10, by the 1990s this number had nearly doubled.[21] Needless to say, as global temperatures continue to rise, weather-related catastrophic events will similarly increase in both scale and in frequency.

Severe weather is likely to have a disproportional impact on business-related losses. Between 1970 and 2004, storms and floods accounted for over 90% of the total economic cost of extreme weather-related events,[22] with storms and floods accounting for 75% and 10% of insured losses, respectively.[23] The average insured loss of weather-related events, adjusted for inflation, increased from $3 billion in 1990 to an annual figure of approximately $16 billion in 2005.[24] These numbers can be juxtaposed with the estimated $4 billion in insured losses arising from the 2016 Fort McMurray wildfires, the largest insured loss in Canadian history.[25]

2. Coverage and issues

Business interruption insurance is designed to provide insurance coverage for losses suffered to a business' income as a result of loss or damage to its property by a covered peril. A typical coverage provides that:

> *"We will pay for the actual loss of business income you sustain due to the necessary suspension of your "operations" during the period of "restoration." The suspension must be caused by the direct physical loss, damage, or destruction to property. The loss or damage must be caused by or result from a covered cause of loss."*[26]

The coverage is designed to cover actual loss sustained by a business which results directly from physical damage to its property. Typically, the insurance will respond to loss of income from the interruption of the insured's business as a result of the insured's physical loss. As is the case with all coverages, the market now places a variety of different coverages, riders and exclusions.

Naturally, insurers placing business interruption coverages are particularly susceptible to the increased risks posed by climate change.[27] Downpours, droughts and severe heat are the natural events resulting from climate change and will have a variety of

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negative impacts on businesses.[28] Perhaps most obvious is the disruptive impact of severe weather on distribution and supply chains, as well as access to utility services, transportation, and telecommunications.[29] On one end, businesses may suffer direct physical losses to their business property such that they are unable to receive shipments; consider a food market caught in the middle of a flood. On the other end, businesses hit by extreme hail or lightning storms may suffer interruptions to their energy grid or electrical systems and may be unable to ship products.

With respect to the direct risks posed by extreme weather events, the increasing frequency and magnitude of hurricanes presents a significant challenge for those insurers writing business interruption coverage. Hurricanes are an immediate threat to those businesses whose operations depend on coastal regions for production, such as oil and gas producers, which suffered $10 billion in insured losses in 2005 as a result of hurricanes.[30] In the aftermath of the 2005 hurricane season, oil producers then saw premiums increase by up to 500%.[31]

One example of how the requirement of direct physical loss in business interruption coverage may be litigated in light of increasingly severe weather is seen in *Harry's Cadillac–Pontiac–GMC Truck Co., Inc. v. Motors Ins. Corp.*[32] A snowstorm rendered the plaintiff's dealership inaccessible for a week. The plaintiff was insured under a commercial insurance policy which provided protection against loss of income resulting from the suspension of business due to property repairs. It appears that the roof damage and repairs did not interrupt the plaintiff's business. However, the plaintiff sought to recover allegedly lost profits because of the interruption of its business. The defendant insurer denied the claim and was successful seeking summary judgment.

On appeal, the sole issue was whether the plaintiff's alleged lost profits were covered under the business interruption coverage. The plaintiff argued that its inability to access the dealership, due to the snowstorm, rendered the business as "lost" to the plaintiff as if "the storm leveled the premises". The insurer contended that, save for the damage to the dealership's roof (which was covered), there was no "direct physical loss or damage". The clause in question only covered business interruption losses requiring repair, rebuilding, or replacement. Because the plaintiff could not prove that it lost business income as a result of damage to or the destruction of its property (instead, "the loss was proximately caused by plaintiff's inability to access the dealership due to the snowstorm"), the Court of Appeals of North Carolina found that the coverage was not triggered.

Business interruption coverages are not necessarily restricted to immediately "direct" physical damage to businesses and their suppliers. Significant weather-related events pose a substantial risk, for example, of power outages, particularly in communities with poorly developed infrastructure.[33] Heat waves, as a result of warmer temperatures, will increasingly cause "brown outs" or even the total failure of energy grids.[34] It was reported that Ford Motor Company suffered business interruption losses at half of its North American manufacturing plants in 2003 due to power outages, including supply line disruptions.[35] In one survey, half of responding companies reported that business interruption losses caused by power outages result in $50,000 of downtime each hour, while one quarter of respondents reported such loss to be $250,000 hourly.[36] Such "indirect" physical losses are expected to present courts with difficult coverage questions.

3. Globalisation

The globalisation of business has been accompanied by a corresponding increase in business interruption risk. Disruptions to international supply chains, shipping routes and communications networks from extreme weather will aggravate and internationalise what in the past might have simply been local or regional losses.[37] Following flooding in Thailand in 2011, for example, insurers received numerous business interruption claims stemming from downstream losses incurred in the United States.[38] The interconnectedness of the global economy and increasingly severe weather will also cause other consequential problems, such as insurers having to determine which business is a "direct supplier" in the first-party property context.[39] Climate change will likely result in insurers having to respond to risks which they never intended to underwrite.

Insurers might well respond to the 21st century economy by imposing more stringent conditions on business interruption coverages. This may begin with the market reconsidering which businesses they are willing underwrite in response to increasingly severe weather. Limitations could conceivably be based on geography, including where the business itself is situated or perhaps the "location" of its vendors and suppliers. Indeed, the market could decide to change its approach to underwriting business interruption coverages for businesses operating in coastal regions susceptible to frequent hurricanes, or perhaps in political regions where local governments have either ignored or failed to adequately address or limit the impact of extreme weather events in their area.

4. Urbanisation

Urbanisation may also create risks for insurers. Whereas approximately 30% of the world's population in 1950 lived in urban areas, approximately 50% did so by 2000.[40] The United Nations estimates that, by 2025, 60% of the world's population will live in cities.[41] In the era of climate change, increasing urbanisation may translate into an increased concentration of risk exposure.[42] Indeed, as cities grow into large metropolises, insurers risk greater concentrated losses resulting from severe weather. Some have posited that, had Hurricane Andrew occurred in 2002 as opposed to 1992, for example, the resulting insured losses might have been twice as great.[43]

5. Non-damage denial of access

An additional change that could occur as a result of climate change-related weather events is the increase in demand for "non-damage denial of access" endorsements. These endorsements provide coverage when access to business premises is either hindered or prevented,[44] regardless of whether there has been actual damage to property.[45] A typical wording might read as follows:

> *We will pay for the actual loss of "business income" you sustain and necessary "extra expense" caused by action of civil authority that prohibits access to your premises due to direct physical loss of or damage to property, other than at the "covered premises," caused by or resulting from any Covered Cause of Loss.*

It is anticipated that businesses, in response to increasingly extreme weather, might seek additional coverage in the event that the locale in which they operate is, for example, subject to an evacuation order.

One problem with "non-damage denial of access" riders, however, is that is the coverage is usually dependent on the denial having been ordered by a law enforcement agency or statutory body,[46] as opposed to simply bad weather. With this said, as extreme weather events continue to increase in scale and frequency, it is possible that these endorsements may be amended. They will in any event likely be the subject of future coverage litigation. For example, courts may be called upon to ask whether a road closure resulting

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from a deluge constitutes "actions or instruction of the police or other statutory body"[47] for the purposes of the endorsement. This legal determination will be further complicated where the road on which the insured's business operates remains accessible, but all adjoining roads are closed, thus hindering access to the business for employees and customers. Courts have already begun addressing such scenarios. *730 Bienville Partners, Ltd. v. Assurance Co. of America*[48] was an insurance coverage dispute ultimately resulting from the September 11, 2001 terrorist attacks. The insured had placed a single commercial property insurance policy with Assurance Company of America for two hotels it owned in New Orleans. The policy included a "Civil Authority Extension", providing coverage for business income losses due to the actions of a governmental authority. The insured, which also operated the hotels, asserted that the FAA's closure of various American airports following the attacks, and the resulting cancellation of flights, kept many intended guests from being able to access its hotels.

The insured as a result argued that the policy's Civil Authority Extension should respond to cover lost business income and necessary expenses. The Court disagreed, finding that: "[t]o recover for business losses under the Civil Authority Extension, the loss of business income and necessary expenses must be "caused by action of civil authority that prohibits access to your premises"". In the present case, while the FAA's closure of the airports and the cancellation of flights prevented guests from getting to the plaintiff's hotels, the FAA itself did not "prohibit" access to same. The United States District Court, E.D. Louisiana ruled in favour of the insurer, and the decision was upheld by the United States Court of Appeals, Fifth Circuit.

6. Change in the insurance landscape

In response to changing climate conditions, insurers will wish to protect themselves from exacerbating existing but also future risks. One manner in which this could be achieved is by using a "climate change" exclusion,[49] which could operate to preclude coverage for losses that result directly or indirectly from climate change.[50] These exclusions could conceivably exclude coverage resulting from weather events that might not have otherwise occurred, or alternatively resulted in less damage, in the absence of climate change.

Respectfully, the writers submit that such an exclusion is likely unfeasible and perhaps impossible to implement. Extreme weather will occur with or without the impacts of the changing climate and it will likely be impossible in many cases to discern whether, or to what extent, climate change played a role in any particular loss.[51] While it may in the aggregate be possible to attribute the quantum of extreme weather events to climate change, it is unlikely that science will be able to do so at an individual level. A more feasible option for insurers would be to simply restrict coverage for certain weather events which are no longer commercially feasible to underwrite.

A second possibility for insurers would be to increase the number of subrogated claims pursued.[52] To insulate themselves from the increased risk posed by climate change, insurers could begin pursuing novel claims against municipalities for failing to take adequate precautions that ultimately might have reduced the damage caused by extreme weather events.[53] An increase in subrogated claims is likely the most realistic avenue for insurers to seek to recoup their losses in response to the risks posed by the changing climate (aside from increased premiums). Novel subrogated claims would allow insurers to, in effect, apportion some of their losses, and offset what is expected to be increasing indemnity obligations. Given the lack of success in the climate change litigation arena to date, however, as has been seen in the *Comer* and *Kivalina* litigation in the United States, it remains to be seen whether insurers could be successful in the pursuit of subrogated "climate change" claims.

7. Insurance and climate change going forward

While our understanding respecting the degree and severity that climate change has and will impact the planet is in its infancy, it is increasingly possible to predict its impact on the insurance industry.[54] Insurance companies have been at the forefront of this issue, raising caution about the impacts of global warming as early as the 1970s.[55] At this juncture, it is all but confirmed that extreme weather events will continue to increase in scale and frequency as the planet continues to warm.

Insurance companies must be vigilant in adapting to this new reality and attempt to insulate themselves accordingly. The risks posed to insurers through business interruption coverage might become too great to underwrite as businesses continue to depend, increasingly, on other entities abroad. Insurance companies may need to consider whether they can exclude coverage for "climate change" and how they can limit their coverage for third parties. Subrogated claims and increased premiums are two expected options as to how insurers may act to protect themselves. Insurers and their insureds would be wise to review their coverages and understand their risks as we move forward towards an era where massive hurricanes and forest fires become the new normal.

Conclusion

Cyber-risk and climate change are two significant issues that the Canadian insurance industry is moving to meet. Business interruption coverage, and its protection of future profits, will continue to be a core element of business insurance. These emerging risks will pose challenges for insurers and policyholders alike. Much will be learned as claims experience grows, but difficulties will certainly arise as the foundation of bricks and mortar business interruption coverage is refined to reflect new business and climate realities.

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