

# Client Alert

Insurance Coverage & Recovery Practice Group

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## Infrastructure Crisis Management: Maximizing Insurance Coverage for Business Interruption Losses Caused by the I-85 Bridge Collapse in Atlanta

Atlanta's traffic woes are hardly newsworthy, but last week's I-85 bridge collapse is resulting in traffic headaches that could cause local businesses and the logistics industry to suffer millions of dollars in business interruption losses over the next several months. I-85 is a "critical artery" for transportation through the heart of both Atlanta and the Southeastern region, and the Georgia Department of Transportation estimates that approximately 250,000 vehicles traveled over this now-collapsed, 100-foot portion of highway daily.<sup>i</sup> While local authorities are beginning to open surface streets near the collapsed bridge, unfortunately, there are few good detour options for local residents and businesses located in the immediate vicinity of the collapse.<sup>ii</sup> Around Atlanta, traffic is being rerouted to surface streets or directed to loop around the city,<sup>iii</sup> resulting in overloaded highways and increasingly longer commutes.<sup>iv</sup> While a bridge collapse on I-285, Atlanta's "Perimeter" highway, may have been even more disastrous for the logistics sector, the I-85 closure is also costing shipping and logistics industries, as they are finding it difficult to make local deliveries and experiencing significant delays from all of the rerouted traffic.<sup>v</sup> Mayor Kasim Reed has called this a "transportation crisis,"<sup>vi</sup> and Governor Nathan Deal has declared a state of emergency.<sup>vii</sup> And unlike the 2014 "Snowpocalypse," which crippled the city for about 48-hours until the 2 inches of ice and snow melted, officials are projecting the bridge repair will not be complete until at least June.<sup>viii</sup>

The I-85 bridge collapse in Atlanta is a good reminder that commercial insurance policies can be a valuable asset to protect against business interruption losses when a crisis impacts the critical infrastructure upon which your business depends. Even if your business is located hundreds of miles away from a disaster impacting a key supplier, your insurance policy may help protect losses to your business's supply chain if a catastrophe like a bridge collapse, explosion, fire, or service interruption prevents your supplier from carrying out its business operations as planned. In a similar vein, shipping and logistics companies may have insurance policies that protect against business interruption losses incurred when such a catastrophe impacts their routes, shipments, and operating costs. As outlined below, the wording of your policies can make or break coverage, and careful

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procedures for documenting your losses are critical to maximizing your business's ultimate insurance recovery.

When the Minneapolis I-35W bridge collapsed over the Mississippi River nearly ten years ago, more than 140,000 vehicles drove on the bridge each day,<sup>ix</sup> resulting in a total economic loss for Minnesota of \$60 million until the bridge was repaired.<sup>x</sup> Atlanta commuters will begrudgingly adapt to longer drive-times in the days and weeks ahead, and the I-85 bridge collapse fortunately did not result in the loss of human life or widespread property damage. However, the economic effects of the bridge collapse will be keenly felt by area businesses for months if their employees cannot get to work, their customers do not show up to shop, and their distributors are unable to receive and deliver product.<sup>xi</sup> Likewise, logistics and distribution companies will experience long delays and concomitant increased costs.<sup>xii</sup> Businesses should be reviewing their policies now with coverage counsel to determine whether coverage exists for the I-85 collapse or similar infrastructure crises.

## **Key Insurance Coverages for Infrastructure Related Losses**

**Contingent Business Interruption (CBI) Insurance.** Even if your business is not directly impacted by an infrastructure catastrophe, your commercial insurance policies may provide CBI coverage for economic losses arising from supply chain disruptions, such as an inability to acquire parts or services from your suppliers or an inability to deliver your products or services to customers.

**Ingress/Egress Coverage.** Covers loss of business income caused by physical damage to property of others that prevents ingress/egress to your business.

**Service Interruption Coverage.** Covers any loss or expense caused by interruption of utility services resulting from damage to a utility's property.

**Civil Authority Coverage.** Protects businesses from losses resulting from a government order restricting access to a business's property or closing roadways, bridges, or ports that prevent access to your business.

Even if your company is unsure of the full extent of its losses, it is vital to promptly locate all available insurance policies, assess the potential coverages available, and promptly notify the insurers to maximize the recovery available under your company's insurance program.

## **Coverage Issues to Consider Before Making a Claim**

**Even if your business did not suffer property damage as a result of the infrastructure failure, determine whether your commercial insurance policy provides business interruption coverage.** Because businesses in the vicinity of the I-85 bridge collapse did not suffer physical damage, it will be important to understand whether your policy covers losses resulting from an impaired access to the business or if your policy requires a complete inability to access your business. For businesses involved in shipping and logistics, it will be important to analyze your insurance policy to determine whether any provisions provide coverage for losses arising from delays or increased costs due to failed infrastructure or other catastrophes. Further, the law continues to develop in response to recent disasters and varies across jurisdictions, so it is critical to understand causation issues as you prepare a claim and communicate with your insurer.

**Sub-Limits and Deductibles.** Most policies contain varying sub-limits and self-insured retentions depending on the cause of the loss and the type of coverage implicated. It is important to understand these limitations before making a claim.

Loss Valuation Issues. Many policies contain information about how losses should be accounted (i.e., lost profits, lost revenue, etc.), which can have a dramatic impact on the value of an insured loss. It is important to understand these provisions before making a claim, and for complicated losses, it may be advisable to seek the advice of a forensic accountant before submitting a proof of loss.

## **Avoiding Pitfalls That Can Diminish or Prevent Your Insurance Recovery**

The following is a summary of essential steps that your business should take to maximize the value of its insurance assets following the bridge collapse (or other similar infrastructure failure).

Gather All Policies and Closely Review Their Terms. Do not assume your losses are uninsured. As policy terms vary and may be subject to different interpretations, consult with coverage counsel to assist in evaluating coverage.

Provide Prompt Notice of All Claims and Potential Claims. Policies often require policyholders to notify the insurer “immediately,” “as soon as possible,” or “as soon as practicable” after the insured becomes aware of a potential claim. The consequences of failure to comply with notice provisions may be severe and preclude coverage. Even if your business is uncertain whether it has sustained covered losses, it should notify its insurers of any possible losses out of an abundance of caution.

Collect and Preserve Evidence of Business Losses and Damages. It is important to record all costs, expenses, and damages for which you might seek coverage. For example, to ensure full coverage under CBI insurance for lost profits, businesses should document their losses by maintaining proof of business performance prior to, during, and following the bridge collapse. Many policies also provide expenses associated with claim-related activities. All such expenses should be tracked.

Be Careful About Internal and External Communications Regarding the Loss. Businesses should be careful when communicating with brokers and insurers concerning losses. If litigation over insurance coverage becomes necessary, insurers may gain access to internal communications such as emails and memoranda regarding a business’s coverage claim. How a loss is characterized in such communications may be used to deny coverage. Involving coverage counsel in these communications may ensure that they are protected as privileged in the event of litigation over coverage. Businesses also should identify a single point of contact or spokesperson for all communications with insurers.

Coordinate Mitigation Efforts With Insurer. While it is important to mitigate losses, keeping your insurer in the loop about these efforts where possible will minimize the chance that the insurer will apply hind-sight to second-guess the reasonableness of the mitigation procedures that a business puts in place.

Review Your Business’s Insurance Program to Ensure Business Interruption Coverage is Adequate. Even if your business was not impacted by the I-85 bridge collapse, many of the same principles apply to coverage for natural disasters or infrastructure failures that may impact your business. The greater frequency and severity of recent natural disasters, coupled with the increased potential for localized natural disasters to disrupt supply chains in today’s globalized economy, increase the likelihood that your business may incur significant business interruption losses in the future. To minimize the risk of future losses and to avoid gaps in coverage, all businesses should carefully review their insurance programs with experienced brokers and legal counsel to ensure coverages are adequate in the event of a catastrophic loss.

**Engage Coverage Counsel.** Claims from the I-85 bridge collapse are complex and may contain potential coverage defeating traps. Experienced coverage counsel is critical and will work with your brokers to ensure that you can maximize the insurance recovery for your loss.

*We work closely with our clients and their risk managers to collect from their insurers for losses arising from business interruption and supply chain disruption caused by catastrophic events.*

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*This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising."*

<sup>i</sup> Nicole Chavez and Steve Almasy, *I-85 Fire: Section Of Atlanta Highway Collapses*, CNN (Mar. 30, 2017, 11:41 PM), <http://www.cnn.com/2017/03/30/us/atlanta-i-85-fire/>.

<sup>ii</sup> *Atlanta Traffic Horror: Crews Razing Fallen Highway Overpass*, ABC NEWS (Apr. 2, 2017, 12:11 PM), <http://abcnews.go.com/US/wireStory/atlanta-traffic-horror-crews-razing-fallen-highway-overpass-46525477>.

<sup>iii</sup> See, e.g., *Alternate Routes To Interstate 85 For Motorists In And Around Metro Atlanta*, 11 ALIVE <http://www.11alive.com/traffic/alternate-routes-to-interstate-85-for-motorists-in-and-around-metro-atlanta/426998327>; David Wickert and Ana Santos, *How The I-85 Closure Will Affect Your Commute*, THE ATLANTA JOURNAL-CONSTITUTION (Apr. 4, 2017, 8:08 AM), <http://www.ajc.com/news/local/how-the-closure-will-affect-your-commute/Ndlt3EfGiquILjD6OJ1a1M/>.

<sup>iv</sup> Bill Chappell, *I-85 Bridge Collapse In Atlanta Brings Headache To 250,000 Drivers A Day*, NPR (Mar. 31, 2017), <http://www.npr.org/sections/thetwo-way/2017/03/31/522170988/i-85-bridge-collapse-in-atlanta-brings-headache-to-250-000-drivers-a-day>; Scott Trubey, *Fiery I-85 Bridge Collapse Is Economic Blow To Atlanta Businesses*, THE ATLANTA JOURNAL-CONSTITUTION (Mar. 30, 2017, 11:41 PM), <http://www.ajc.com/news/local/fiery-bridge-collapse-economic-blow-atlanta-businesses/pX35JiVpRQXLYCrcZB4RBN/>; "Tremendous" Traffic Impact Expected After Atlanta Bridge Collapse, TIME (Mar. 31, 2017), <http://time.com/4720317/atlanta-interstate-85-collapse-fire-traffic/>.

<sup>v</sup> Edwin Lopez, *I-85 Overpass Collapse To Cause Months of Congestion in Georgia*, SUPPLYCHAINDIVE (Apr. 3, 2017), <http://www.supplychaindive.com/news/GA-bridge-collapse-infrastructure-road-logistics/439586/>; Scott Trubey, *How A Bridge Collapse on Atlanta's Would Be Worse Than I-85*, THE ATLANTA JOURNAL-CONSTITUTION (Apr. 4, 2017, 4:48 PM), <http://www.ajc.com/news/local/how-bridge-collapse-atlanta-perimeter-would-worse-than/KvRE1Vuty7TTyoHBSsKUuI/>.

<sup>vi</sup> Nicole Chavez and Steve Almasy, *I-85 Fire: Section Of Atlanta Highway Collapses*, CNN (Mar. 30, 2017, 11:41 PM), <http://www.cnn.com/2017/03/30/us/atlanta-i-85-fire/>.

<sup>vii</sup> *Deal Declares State Of Emergency Following I-85 Fire*, GEORGIA.GOV (Mar. 30, 2017), <https://gov.georgia.gov/press-releases/2017-03-30/deal-declares-state-emergency-following-i-85-fire>.

<sup>viii</sup> Kristen Reed, *I-85 Bridge Is Expected To Be Completed In June*, 11 ALIVE (Apr. 4, 2017), <http://www.11alive.com/traffic/i-85-collapse/i-85-collapse-day-6/428393998>.

<sup>ix</sup> MINN. DEPT. OF TRANSP., *Economic Impacts of the I-35W Bridge Collapse*, available at <http://www.dot.state.mn.us/i35wbridge/rebuild/pdfs/economic-impacts-from-deed.pdf>.

<sup>x</sup> *Id.*

<sup>xi</sup> *Neighborhoods Feeling Impact of I-85 Collapse*, WSB-TV (Apr. 1, 2017), <http://www.wsbtv.com/news/local/atlanta/surrounding-neighborhoods-feeling-traffic-impact-of-i-85-bridge-collapse/507953139>; Jarred Schenke, *Portion of I-85 in Atlanta Collapses, Region Braces for Impacts*, BISNOW (Mar. 31, 2017), <https://www.bisnow.com/atlanta/news/construction-development/atlanta-highway-collapse-will-have-regional-impact-72799>; Scott Trubey, *Fiery I-85 Bridge Collapse Is Economic Blow To Atlanta Businesses*, THE ATLANTA JOURNAL-CONSTITUTION (Mar. 30, 2017, 11:41 PM), <http://www.ajc.com/news/local/fiery-bridge-collapse-economic-blow-atlanta-businesses/pX35JiVpRQXLYCrcZB4RBN/>.

<sup>xii</sup> Edwin Lopez, *I-85 Overpass Collapse To Cause Months of Congestion in Georgia*, SUPPLYCHAINDIVE (Apr. 3, 2017), <http://www.supplychaindive.com/news/GA-bridge-collapse-infrastructure-road-logistics/439586/>; Scott Trubey, *How A Bridge Collapse On Atlanta's Perimeter Would Be Worse Than I-85*, THE ATLANTA JOURNAL-CONSTITUTION (Apr. 4, 2017, 4:48 PM), <http://www.ajc.com/news/local/how-bridge-collapse-atlanta-perimeter-would-worse-than/KvRE1Vuty7TTyoHBSsKUuI/>.