UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Construction Systems, Inc.,

Plaintiff,

Civ. No. 09-3697 (RHK/JJG)
MEMORANDUM OPINION AND ORDER

v.

General Casualty Company of Wisconsin,

Defendant.

Robert E. Kuderer, Johnson & Condon, PA, Minneapolis, Minnesota, for Plaintiff.

Robert C. Burrell, Borgelt, Powell, Peterson & Frauen SC, Milwaukee, Wisconsin, and James L. Haigh, Cousineau McGuire Chartered, Minneapolis, Minnesota, for Defendant.

INTRODUCTION

In this insurance-coverage dispute, Plaintiff Construction Systems, Inc. ("CSI") alleges that General Casualty Co. of Wisconsin ("General Casualty") has breached the terms of its Policy and acted in bad faith by failing to pay losses CSI incurred when a July 2006 lightning strike damaged its critical machinery. General Casualty moves for partial summary judgment, arguing that it has no duty under the Policy to (1) pay replacement costs to CSI or (2) pay business-interruption losses incurred more than 12 months after the lightning strike. For the reasons set forth below, the Court will grant the Motion in part and deny it in part.

BACKGROUND

CSI is in the business of structural steel fabrication. Part of its business includes

manufacturing steel support beams for large-scale construction projects. It is owned by Wyman Haberer and his wife. Its daily operations are run by their son, Perry Haberer, who serves as CSI's vice president.

Integral to CSI's operations is a Peddinghaus Y/1000 System ("the Peddinghaus" or "the system"), a highly customized system of machines that cuts and drills steel beams. The system includes a punch-drill, marking and measuring systems, a saw line, and a coping system. The system, originally purchased by CSI in the 1980s, was one of only seven built and the only one still in use. (Molde Aff. Ex. 5, at 10.) Due to its scarcity, age, and customization, replacement parts for the Peddinghaus are not readily available and few people have the expertise to perform repairs on it. (Id. at 18.)

Between May 4, 2006, and May 4, 2007, CSI was insured under an insurance policy issued by General Casualty ("the Policy"). The Policy is lengthy, but for present purposes only two provisions are at issue. The first is the optional replacement cost value provision found in the "Building and Personal Property Coverage Form," which provides:

> **G. Optional Coverages**
>
> * * *
>
> **3. Replacement Cost**
>
> **a.** Replacement Cost (without deduction for appreciation) replaces Actual Cash Value in the Loss Condition, Valuation, of this Coverage Form.
>
> *** * ***
>
> **c.** You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. ***In the event that you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this***

> ***Optional Coverage provides*** [i.e., the Replacement Cost] ***if you notify us of your intent to do so within 180 days after the loss or damage***.
>
> **d.** We will not pay on a replacement cost basis for any loss or damage:
>
> > **(1)** Until the lost or damaged property is actually repaired or replaced; and
> >
> > **(2)** Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

(Burrell Aff. Ex. 1, at 1000190 (emphasis added).) The second provision at issue is the limitation on business-income coverage found in the "Business Income (and Extra Expense) Actual Loss Sustained Coverage Form," which provides:

> **A. Coverage**
>
> We will pay for the actual loss of Business Income you sustain due to necessary "suspension" of your "operations" during the "period of restoration". . . .
>
> ***We will only pay for loss of Business Income that occurs within 12 consecutive months after the date of direct physical loss or damage.***

(Id. at 1000192 (emphasis added).)[1]

On or about July 13, 2006, lightning struck at CSI's place of business, causing damage to the Peddinghaus. The parties' responses following the lightning strike are somewhat unclear based on the record. Perry Haberer claims he notified General Casualty of the lightning strike on August 8, 2006, via CSI's insurance agent. (Haberer Decl. ¶ 9; Compl. ¶ 38.) Haberer also purportedly submitted a Property Loss Notice to General Casualty on August 24, 2006. (Compl. ¶¶ 38, 40.) The record, however,

[1] Identical language limits the Extra Expense coverage also contained in the same Form of the Policy. (Burrell Aff. Ex. 1 at 1000193.)

contains no document setting forth any formal claim by CSI regarding the July 13, 2006, lightning damage until two Proof of Loss Statements dated February 6, 2009, and November 30, 2009.[2]

In any event, Perry Haberer met with CSI's insurance agent and Gary Howarter, General Casualty's claim specialist who handled this matter, on August 24, 2006. At this meeting, the parties discussed the damage caused by the lightning strike and the unique challenges of repairing the Peddinghaus. (Molde Decl. Ex. 5 at 18–19.) General Casualty's notes from this meeting indicate that CSI intended to repair the system. (Id.) However, the parties dispute whether the possibility that CSI would need to *replace* the Peddinghaus was ever mentioned at the meeting. General Casualty maintains it had no idea CSI might replace the system until May of 2008. Haberer claims, however, that he "indicated the obvious" to Howarter at their August 2006 meeting—if the Peddinghaus could not be repaired to its pre-lightning strike status, it would need to be replaced. (Haberer Decl. ¶ 10.) The estimated cost of repairs discussed at the August 24, 2006, meeting was around $30,000. (Id.)

Following this initial meeting, there was sporadic correspondence (at best) between Howarter and Haberer. Between October 2006 and March 2008, Howarter occasionally contacted Haberer to inquire about the status of any repairs. Haberer

[2] Although CSI claims to have submitted a Property Loss Notice to General Casualty in August 2006, neither party has seen fit to provide the Court with a copy of this Notice. There is merely an entry in General Casualty's Claim Log Notes on August 27, 2006, stating "New Claim created." (Molde Decl. Ex. 5, at 19.) Another entry from the same date and time indicates the caller's name as "Perry" and the claim type as "unknown." (Id.) The record contains no other document outlining the claim CSI made or the nature of payments it was seeking from General Casualty until the first Proof of Loss Statement dated February 6, 2009. (Burrell Aff. Ex. 4.)

repeatedly answered that the Peddinghaus was "limping along" at a diminished capacity,[3] and he was unwilling to suspend operations for permanent repairs while there were jobs to do. (Molde Decl. Ex. 5, at 15–18.) In May 2008, CSI's new insurance agent, Penny Ditter, relayed to Howarter that CSI had finally decided the Peddinghaus system could not be repaired back to full capacity. (Id. at 14.) At this time, CSI was considering two options—either fixing the system as best it could and living with a diminished capacity (at an estimated cost of $125,000), or replacing it with a used or rebuilt machine (at an estimated cost of $220,000). (Id.) Ditter also indicated that a new machine cost about $1.4 million, but CSI did not want to replace the system at that time. (Id.)

Between May and August of 2008, General Casualty harbored some doubt whether the loss was correctly classified as a lightning loss, and it submitted the claim to Hartford Steam Boiler ("HSB") to investigate whether it should instead be handled as an equipment breakdown loss.[4] (Id. at 13.) HSB eventually "denied" the claim, finding that the damage was indeed caused by lightning, and General Casualty hired an electrical engineer to further investigate before finally reaching this same conclusion in the fall of 2008. (Id. at 7–9, 4.) On October 30, 2008, Howarter completed a Large Loss Notice increasing the reserve for the CSI claim to $300,000. (Molde Aff., Ex. 2.)

[3] Prior to the lightning strike, the Peddinghaus allowed CSI to produce between 60 and 200 steel beams per day. (Haberer Decl. ¶ 6.) On March 5, 2008, the system was able to cut only 50 to 60 beams per day. (Molde Decl. Ex. 5, at 15.) In comparison, CSI could only cut 5 beams per day if it did so completely by hand without the Peddinghaus. (Id.) The Peddinhaus's capacity apparently continued to decrease over time: Haberer's July 30, 2010, Declaration states that "CSI is currently averaging between 8–22 [beams] per day." (Haberer Decl. ¶ 6.)

[4] HSB apparently reinsured part of the coverage under the Policy such that it would have been responsible for the loss if it were a breakdown loss instead of a lightning loss. (Molde. Decl. Ex. 5, at 10–11, 13.)

Between September and December of 2008, Howarter's notes log several calls to CSI requesting invoices and documentation of the work being done on the Peddinghaus. (Id. Ex. 5, at 3–9.) On December 10, 2008, General Casualty mailed CSI a letter with a Proof of Loss form due within 60 days along with supporting documentation. (Id. at 2.) In response, CSI submitted a Sworn Statement of Proof of Loss accompanied by four boxes of documents. (Id. at 1; Burrell Aff. Ex. 4.) This Proof of Loss listed the "actual cash value" of the system at the time of the loss as $20,097,658.58. (Burrell Aff. Ex. 4.) A list of itemized costs attached to the Proof of Loss statement claimed a total loss amount of $24,509,966.48. (Id.)

If General Casualty responded to CSI's Proof of Loss statement thereafter, that response is not in the record. Instead, it appears the claim went unanswered, and it certainly remained unpaid. Nine months later, CSI filed an amended Sworn Statement of Proof of Loss, this time claiming a total loss of $32,435,014.45. (Burrell Aff. Ex. 5.) Of this $32 million, $10 million is for replacement of the Peddinghaus system, while over $20 million is for lost business. (Id.) Again, no response from General Casualty appears in the record. On December 23, 2009, CSI filed this lawsuit, and General Casualty now moves for partial summary judgment.

The parties do not dispute that CSI was covered by the Policy at the time of the lightning strike. They also agree that the Peddinghaus was a covered piece of equipment and that a lightning strike was a covered loss event under the Policy's terms. The parties do, however, hotly dispute the precise scope of the coverage under the provisions quoted above. Specifically, General Casualty argues that under the Policy, (1) CSI is not entitled

to receive replacement cost value for the Peddinghaus machine, and (2) CSI is not entitled to payment for business-interruption losses beyond the first 12 months following the lightning strike.

STANDARD OF DECISION

Summary judgment is proper if, drawing all reasonable inferences in favor of the nonmoving party, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322–23 (1986). The moving party bears the burden of showing that the material facts in the case are undisputed. Id. at 322; Mems v. City of St. Paul, Dep't of Fire & Safety Servs., 224 F.3d 735, 738 (8th Cir. 2000). The Court must view the evidence, and the inferences that may be reasonably drawn from it, in the light most favorable to the nonmoving party. Graves v. Ark. Dep't of Fin. & Admin., 229 F.3d 721, 723 (8th Cir. 2000); Calvit v. Minneapolis Pub. Schs., 122 F.3d 1112, 1116 (8th Cir. 1997). The nonmoving party may not rest on mere allegations or denials, but must show through the presentation of admissible evidence that specific facts exist creating a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986); Krenik v. Cnty. of Le Sueur, 47 F.3d 953, 957 (8th Cir. 1995).

DISCUSSION

Courts apply general contract-law principles to interpret insurance policies under Minnesota law.[5] Carlson v. Allstate Ins. Co., 749 N.W.2d 41, 45 (Minn. 2008); Lobeck

[5] There is no question here that Minnesota law governs this case, and neither party raises any choice-of-law argument.

v. State Farm Mut. Ins. Co., 582 N.W.2d 246, 249 (Minn. 1998). When a policy is clear and unambiguous, it should be interpreted literally. Sterling v. Va. Surety Co., 173 N.W.2d 342, 354 (Minn. 1969). In other words, courts are to give policy language its "usual and accepted meaning." Marchio v. W. Nat'l Mut. Ins., 747 N.W.2d 376, 380 (Minn. Ct. App. 2008) (quoting Stewart v. Ill. Farmers Ins. Co., 727 N.W.2d 679, 684 (Minn. Ct. App. 2007)). If policy language is ambiguous, the ambiguity should be resolved against the insurer. Medica, Inc. v. Atl. Mut. Ins. Co., 566 N.W.2d 74, 77 (Minn. 1997). Ambiguity exists if language is "reasonably subject to more than one interpretation." Id.

Courts should not rewrite parties' insurance contracts. Sterling, 173 N.W.2d at 354. Rather, they should "'guard against' invitations to find ambiguity where none exists." Metro. Prop. & Cas. Ins. Co. v. Jablonske, 722 N.W.2d 319, 324 (Minn. Ct. App. 2006) (quoting Columbia Heights Motors, Inc. v. Allstate Ins. Co., 275 N.W.2d 32, 36 (Minn. 1979)). Courts should avoid interpretations that forfeit the insured's rights under a policy unless the forfeiture is evident in clear and unambiguous language. Nathe Bros., Inc. v. Am. Nat'l Fire Ins. Co., 615 N.W.2d 341, 344 (Minn. 2000) (citations omitted).

I. Replacement Cost of the Peddinghaus System

CSI seeks payment from General Casualty for the replacement cost of the Peddinghaus system, totaling approximately $10 million. General Casualty concedes that the Policy included replacement cost coverage. It argues, however, that coverage was subject to a condition precedent under Section G.3.c of the Building and Personal

Property Coverage Form, which required CSI to notify it within 180 days after the loss if CSI intended to claim replacement costs. (Mem. in Supp. at 9.)

> Section G.3.c is somewhat convoluted. In relevant part, it provides:
>
> You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event that you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides [i.e., the Replacement Cost] *if* you notify us of your intent to do so within 180 days after the loss or damage.

This provision contemplates two potential types of coverage: replacement cost value ("RCV") or actual cost value ("ACV").[6] Essentially, it gives CSI three options: (1) make a claim for ACV following a loss; (2) make a claim for RCV following a loss; or (3) initially claim ACV and then later make an additional claim for RCV. See Wetmore v. Uniguard Ins. Co., 107 P.3d 123, 126–27 (Wash. Ct. App. 2005) (interpreting a policy with an identical replacement cost provision to allow this third option for recovery). "Option 3," the so-called "two-step" approach, allows an insured to initially claim ACV to enable repairs or replacement to begin, and then later, if actual expenses exceed ACV, claim RCV to the extent replacement costs exceed ACV. (Mem. in Opp'n at 13–14.)

General Casualty emphasizes the language providing that CSI may seek replacement costs "*if* [it] notif[ies] [the insurer] of [its] intent to do so within 180 days after the loss or damage." (Mem. in Supp. at 9.) It argues that "every RCV claim

[6] Actual cost value is determined based on either fair market value or an amount set in the policy. See Citizens Ins. Co. of N.J. v. Foxbilt, Inc., 226 F.2d 641 (8th Cir. 1955). Replacement cost value, on the other hand, is typically much higher, as it does not take into account factors such as depreciation but simply covers the cost to replace the property lost or damaged. Here, for purposes of calculating the Policy premiums, the ACV was set at around $3.5 million (Compl. ¶ 4); the RCV now sought by CSI is $10 million.

necessarily presupposes an ACV claim" (Reply Mem. at 11), and thus the 180-day notice requirement was a condition precedent to receiving any RCV payment.[7] (Mem. in Supp. at 9.) CSI responds by pointing to the first clause of the sentence, providing "*[i]n the event that* [CSI] elect[s] to have loss or damage settled on an actual cash value basis" it can still claim replacement costs if it notifies the insurer. (Mem. in Opp'n at 12.) Under CSI's reading, its 180-day notice obligation was triggered only if it elected to first have its loss settled on an ACV basis or if it received ACV payments, neither of which occurred. (Id.)

The first sentence of section G.3.c undermines General Casualty's interpretation of the Policy. That sentence provides: "You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis," suggesting that RCV is the default and ACV is an alternative. Regardless, the "in the event that" clause appears to attach the 180-day notice condition only to "option 3"—that is, the circumstance in which CSI were to first seek ACV and then later seek RCV.

General Casualty argues that CSI's reading of the Policy is illogical, as it could potentially allow an insured to wait years before making any claim and then suddenly claim RCV without providing any notice. While this may indeed be troublesome, it is nonetheless the conclusion the Court must reach based on the Policy's language. The

[7] At oral argument on this Motion, General Casualty instead asserted that CSI had the option to either claim RCV only or RCV predicated on an ACV claim, and it did neither in this case. The general lack of clarity about the types of claims possible under the Policy and the type of claim CSI actually filed here makes it impossible for the Court to resolve the issue as a matter of law based on the language of the Policy.

structure of section G.3.c attaches the 180-day notice requirement only to a certain type of RCV claim—the type predicated on an ACV claim.

General Casualty cites Saathoff v. Country Mutual Insurance Co., 886 N.E.2d 370 (Ill. App. Ct. 2008), in support of its argument that the provision clearly and unambiguously required CSI to give notice within 180 days. The policy language at issue in Saathoff provided:

> If you elect not to repair or replace the property, the loss settlement will be made on an [ACV] basis rather than on a [RCV] basis. Even if you elect this option, you still have the right to make a claim on a replacement cost basis. You must, however, notify us in writing within 180 days after the loss.

Id. at 374. This provision is clearer than General Casualty's Policy both in terms of the type of notice required (written) and the circumstances permitting the insured to receive either ACV or RCV payments or both. Saathoff did not repair or replace the property, nor did he give 180 days notice of his intent to replace the property; thus he was to be paid on an ACV basis. Id. at 376. Conversely, the Policy language here does not make clear whether CSI's default was ACV unless it instead requested RCV. Hence, instead of bolstering General Casualty's position, Saathoff merely illustrates the ambiguity and lack of clarity in the Policy before the Court.

Here, whether CSI is entitled to receive RCV turns on the nature of the claim and whether it was initially a claim for ACV or, rather, a claim for RCV from the outset. At this stage, the Court cannot answer this question, as the record lacks detail about the claim CSI filed following the lightning strike.

Moreover, even if CSI were required to provide notice within 180 days as a condition precedent to receiving RCV, there is a fact dispute about whether Perry Haberer (acting for CSI) provided General Casualty notice that CSI might replace the Peddinghaus within the first 180 days after the lightning strike. General Casualty maintains that the first indication it ever received that CSI might need to replace the Peddinghaus came in May 2008, nearly two years after the lightning strike in July 2006 and well beyond 180 days. Yet Haberer avers that he told General Casualty's adjuster at their August 24, 2006, meeting that if the system could not be repaired it would have to be replaced.[8] (Haberer Decl. ¶ 10.)

Ultimately, the 180-day notice provision in Section G.3.c may not have applied here. The clearest reading of the Policy is that, even if the notice condition applies to the "option-3" process for settling CSI's claim, CSI could have claimed RCV without being subject to the condition. On this record, it is not clear to the Court whether CSI's initial claim was for ACV or RCV, so the issue cannot be resolved at this stage. At worst, the Policy language is ambiguous about when notice was required. Courts should avoid interpretations that forfeit an insured's rights in the absence of clear and unambiguous language in the Policy. Nathe Bros., 615 N.W.2d at 344. Thus, the Court resolves the ambiguity in favor of the insured. See Medica, 566 N.W.2d at 77. General Casualty's motion for Summary Judgment on this ground must therefore be denied.

[8] Notably, the Policy does not specify the form the notice must take or require that it be in writing to be effective.

II. Business-Interruption Losses

As its name suggests, business-interruption insurance exists to pay an insured the profits it would have earned absent any interruption of its business. See Great N. Oil Co. v. St. Paul Fire & Marine Ins. Co., 227 N.W.2d 789, 793 (Minn. 1975). CSI contends that General Casualty is liable for business-income losses[9] and expenses sustained from the date of the lightning strike more than three years ago to the present, despite the express 12-month limitation in the Policy. This argument is based on CSI's view that its continuing business losses are attributable to undue delay on the part of General Casualty, entitling it to collect additional losses. The law, however, provides no basis for CSI to overcome the clear and unambiguous Policy language.

CSI cites numerous cases in which other courts, including the Eighth Circuit, have extended the "period of restoration"—the period during which an insurer must pay business-interruption losses—when delays in restoring operations were attributable to the insurer's actions. These cases are inapposite, however, as none involved a clear 12-month limitation like the one in the Policy here.

In Hampton Foods, Inc. v. Aetna Casualty & Surety Co., the Eighth Circuit case heavily relied upon by CSI, the policy at issue defined the period of covered losses as "[t]he length of time . . . which would be required with the exercise of due diligence or

[9] The Court notes that the Policy provides for both loss of business income as well as other extra expenses sustained due to suspension of business operations. Because the Policy contains the identical 12-month limitation on payment for both types of coverage, the Court's analysis is intended to encompass both. The terms "business income" and "business interruption" loss are both used by the Court to refer generally to this coverage.

dispatch, to repair, or rebuild or replace the damaged or destroyed property." 843 F.2d 1140, 1143 (8th Cir. 1988). The Eighth Circuit held that the insurer was liable under this policy for business-interruption losses during the "reasonable period of time needed for Hampton to reenter business plus any delay attributable to Aetna's failure to perform its duties under the policy." Id. (applying the approach of an earlier decision in Omaha Stock Paper Co. v. Harbor Ins. Co., 596 F.2d 283, 290 (8th Cir. 1979)). This result followed logically from the policy at issue in Hampton Foods. Since the "period of restoration" was defined as a theoretical period in which business could be restored with "due diligence" and the policy contained no other time limit, it is rational that the insurer's delays would extend the amount of time in which business could "reasonably" be restored and thus extend the insurer's obligation. The Policy in this case, while defining the "period of restoration" similarly to the policy in Hampton Foods,[10] contains an *additional* provision clearly limiting liability for business losses to a defined period of time (12 months).

Other cases CSI relies upon are similarly inapt. Some address policies nearly identical to the Hampton Foods policy, defining the period for business-interruption coverage as "only such length of time as would be required with the exercise of due diligence and dispatch to rebuild, replace, or repair [the property]." Bard's Apparel Mfg., Inc. v. Bituminous Fire & Marine Ins. Co., 849 F.2d 245, 251 (6th Cir. 1988); A & S

[10] The Policy defines the "period of restoration," as the period that "[b]egins with the date of direct physical loss or damage . . . and [e]nds on the earlier of: (1) [t]he date when the property . . . should be rebuilt or replaced with reasonable speed and similar quality; or (2) [t]he date when business is resumed at a new permanent location." (Burrell Aff. Ex. 1, at 1000196.) If the Policy ended there, the Court's decision would be much closer.

Corp. v. Centennial Ins. Co., 242 F. Supp. 584, 586 (N.D. Ill. 1965). Others deal with differently worded, but similarly indefinite, time periods. See Vt. Mut. Ins. Co. v. Petit, 613 F. Supp. 2d 154, 157 (D. Mass. 2009) (construing a policy that provided fair rental value payments if covered losses made the insured's property unfit to rent for a period defined as "the shortest time required to repair or replace [the property]"); Streamline Capital, LLC v. Hartford Cas. Ins. Co., No. 02-8123, 2003 WL 22004888, at *7 (S.D.N.Y. Aug. 25, 2003) (involving a "period of restoration" defined as the period that "[e]nds on the date when the property at the described premises should be repaired, rebuilt, or replaced with reasonable speed and similar quality"). CSI cites no case applying its proposed approach to a policy containing a clear time limitation on business-interruption losses like the one in the Policy here.[11] (Reply Mem. at 21–22.)

At oral argument, CSI asserted that the 12-month limitation is merely another way of defining a reasonable period of restoration. This argument ignores the Policy's clear terms. Moreover, courts have interpreted 12-month limitation periods on business-income coverage to mean exactly what General Casualty suggests—that its obligation ends after the 12-month period outlined in the Policy expires. The Fourth Circuit dealt

[11] The only case CSI cites involving an express limitation is United Land Investors, which interpreted a policy containing a dollar-amount limitation on business-interruption losses. United Land Investors, Inc. v. N. Ins. Co. of Am., 476 So. 2d 432 (La. Ct. App. 1985). As General Casualty correctly notes, the ultimate award in United Land was $43,860, well within the policy's aggregate limitation of $60,000. Id. at 437, 439. The United Land court did "extend" the period for recoverable losses in the sense that it found the restoration period began only after the insurance money was paid. Id. at 438. Nonetheless, the case is inapposite for two reasons: first, CSI is seeking to lengthen the 12-month period, not merely push it back; and second, the Policy here clearly states that the "period of restoration" begins on "the *date of direct physical loss or damage* caused by or resulting from any Covered Cause of Loss," unlike the policy in United Land.

with a policy provision almost identical to CSI's in High Country Arts & Crafts Guild v. Hartford Fire Insurance Co., 126 F.3d 629, 632 (4th Cir. 1997). There, the policy required the insurer to pay business-income losses sustained during the "period of restoration," but specified it would "only pay for loss of Business Income that occurs within 12 consecutive months after the date of direct physical loss or damage." Id. at 632. The provision was interpreted to contain two separate conditions: to be recoverable, a business loss must *both* be causally related to the "period of restoration" (as defined in the policy) *and* occur within 12 months after the date of the loss. See id. In other words, a 12-month provision like the one in the Policy here is an independent limitation on business-income losses the insurer owes, separate from the "period of restoration."

Here, as in High Country, the Policy contains both a definition of "period of restoration" and an independent 12-month limitation on business-interruption coverage. Attempting to extend business-income payments beyond the first 12 months when the Policy clearly limits coverage to that period, even based on allegations of unreasonable delays by the insurer, ignores the plain language of the Policy. Saathoff, 886 N.E.2d at 376 (addressing a 12-month limitation provision on business-income losses nearly identical to that in the Policy here).

The 12-month limitation period operates as a cut-off—even if the period of restoration extended beyond 12 months (a possibility which might have occurred even absent any alleged delays or bad faith on the part of the insurer), the Policy only provides business-interruption coverage for that expressly-limited period of time. CSI's premiums presumably took this clear limitation into account, and CSI may not now claim a greater

insurance benefit than it bargained for. Under the Policy, General Casualty is not liable for any business-interruption losses that occurred more than 12 months after the date of the lightning strike.

CONCLUSION

Based on the foregoing, and all the files, records, and proceedings, **IT IS ORDERED** that General Casualty's Motion for Partial Summary Judgment (Doc. No. 21), is **GRANTED IN PART** and **DENIED IN PART** as follows:

1. The Motion is **DENIED** with respect to the 180-day notice condition in the replacement costs provision.
2. The Motion is **GRANTED** with respect to the 12-month limitation on business-interruption coverage. General Casualty is not obligated to pay business-interruption losses to CSI that occurred more than 12 months after the lightning strike.

Dated: August 31, 2010

s/ Richard H. Kyle
RICHARD H. KYLE
United States District Judge