

Business Interruption & Commercial Disputes

Understanding and executing the complexities of a business interruption claim is essential in advocating for our clients' interests.

Hollingsworth LLP handles business interruption claims involving billions of dollars in damages for clients on both sides of the “v.” Such disputes often stem from catastrophes like explosions, derailments, fires, or total equipment failures causing unexpected plant shutdowns, supply chain interruption, and significant lost business value. Depending on the situation, claims can be based on simple negligence, breach of contractual obligations, and/or indemnification. Our attorneys retain and work up top experts across the globe in our prosecution or defense of business interruption and commercial disputes in various fields, including industry safety/manufacturing and operating standards, forensic accounting, business valuation, chemical and mechanical engineering, construction scheduling, and construction commissioning and start-up. The team of experts we assemble often includes hired consultants and/or internal company witnesses, depending on the case and the issue.

These claims usually involve two or more large companies as adversaries, often with long histories together as supplier/client or even as business partners or members of joint ventures. We are known for navigating such dicey business situations through a keen understanding of a client's goals in bringing a business interruption claim while maintaining its ongoing business relationships. Likewise, in defending such claims, we have a long and decorated history of advising clients and implementing strategies that use established business relationships to help mitigate both potential and real litigation risks. In addition to handling company on company business interruption claims, we advocate for our clients' interests in obtaining insurance coverage for such losses and claims, including through direct actions against carriers in court and/or in arbitration proceedings across the globe. Recent examples of our more notable wins include:

- As lead trial counsel in the first in-person civil jury trial in Louisiana during the COVID-19 pandemic, we represented one of the world's largest petrochemical manufacturers in its business interruption claim stemming from an explosion and subsequent 23-month shutdown of a plant it jointly owned with another company. The explosion killed two people, spawned mass personal injury litigation involving contract workers on site at the time (for whom we were also lead trial counsel), and caused our client to incur hundreds of millions of dollars in damages due to the shutdown. Following the personal injury litigation, on behalf of our client we sued the joint owner due to gross incompetence in causing the explosion and resulting damages under both breach of contract and contractual indemnification causes of action. The trial was complicated by many COVID-related issues, including being tried in a rented civic center to ensure social distancing, some witnesses having to appear via live video feed due to health concerns and international travel bans, the jury and lawyers (other than when speaking) having to wear masks, which prevented important non-verbal communication, and the civic center having to be reconfigured

and rewired to accommodate trial technology requirements. After defeating numerous attempts by the defense to postpone the trial due to the pandemic and other excuses, the trial proceeded and settled on favorable terms after four weeks. Prior to that favorable result against the former co-owner, we also represented our client in obtaining significant business interruption insurance coverage proceeds, successfully negotiating a significant subrogation waiver as part of the terms of the agreement with the carriers. This allowed our client to keep nearly all of the litigation settlement proceeds, significantly increasing its recovery by tens of millions of dollars.

- We served as lead trial defense counsel in a business interruption/lost business value case involving the largest damages claim in South Carolina history stemming from a derailment and liquid chlorine spill on the property of a plant belonging to one of the country's largest textile manufacturers. The plaintiff argued that extensive equipment corrosion from toxic liquid chlorine caused both business interruption damages and its subsequent decision to shutter the entire business. Our primary defense, as with most of our cases, was to attack that theory. Through multiple depositions of the plaintiff's top-ranking executives and stakeholders, we built a record to prove that the textile company was already bankrupt *before* the derailment, and was using the unfortunate catastrophe as a "golden parachute" for its few stockholders. The case settled on favorable terms after one and a half months of trial and just prior to our cross-examination of the plaintiff's CEO and primary stakeholder.