

Possible implications for insurers of the 28 April blackout

The blackout experienced on Monday 28 April 2025, which affected the entire Iberian Peninsula, is a unique and unprecedented event. Although there are still many shadows as to the cause of the blackout and the repercussions that will result from it, it is estimated that the blackout could mean a loss of 1,600 million euros for the Spanish business fabric[1].

As a result, it is expected a significant increase of claims by policyholders against their insurers for potential damages suffered due to this incident[2]. All of this is expected to raise many questions and legal issues that could have a significant impact on the insurance market as a whole.

The purpose of this newsletter is to analyse some of the controversial issues that may arise in the field of typical warranties included in property and casualty policies.

All Risks Property Damage Policy (property)

Within the scope of the All Risks Property Damage policies, it is expected that the various insurers will receive notifications of claims related to damage to machinery, deterioration of refrigerated goods (e.g. food, vaccines, medicines, pharmaceuticals, vegetables, etc.) and loss of profits.

The potential coverage of this type of damage will depend on the contracted guarantees and applicable exclusions. For this reason, it is very important to avoid automatism and carry out a detailed analysis of coverage on a case-by-case basis and in accordance with the applicable clauses. Without prejudice to the above, below is a list of some of the main guarantees that insured parties may try to activate in order to cover their claims:

-The General All Risks Material Damage Guarantee - it is common for this guarantee to delimit the coverage in quite broad terms, referring to damage caused to any insured property by any event not specifically excluded, provided that such damage derives from sudden, accidental and unforeseen events.

In view of the above, in the absence of the contracting of more specific guarantees (such as Electrical Damage or Refrigerated Goods), the insured could try to cover themselves under this basic guarantee, arguing that the damage suffered by the insured goods derives from a

sudden, accidental and unforeseen event (such as, in their case, an abnormal current or a voltage drop). In this case, it would be relevant to analyse the General Exclusions in order to verify if a specific exclusion for lack or deficiencies in the supply of electricity is foreseen.

-Electrical Damage Warranty - these types of warranties are more specific and are usually provided to cover damage to insured property as a result of abnormal currents or short circuits.

In other words, it is a guarantee that, although it does not usually refer exactly to interruptions or cuts in the supply of electrical energy, it could cover damages due to abnormal currents that, if applicable, could result from the blackout (for example, machinery or equipment damaged as a result of surges produced during the restoration of the electrical system).

- Refrigerated Goods Warranty - generally used to cover damage to refrigerated goods and appliances in cases of power failure (among other causes).

Although this is a guarantee in which, initially, damages derived from the blackout could be included, it is usually more typical of SME and commercial policies subscribed by policyholders in very specific sectors or industries (such as, for example, the food industry).

- The Machinery Breakdown Guarantee - in similar terms to the General All Risks Guarantee, sometimes involves a quite broad delimitation of the coverage, as it covers any damage suffered by the insured machinery as a consequence of a sudden and unforeseeable event. Moreover, in certain clauses, damage to machinery caused by the action of electrical energy is even specifically mentioned within the "damage covered".

Therefore, additionally, the insured could try to activate this guarantee to sustain their claim for damages that, if applicable, could derive from the blackout (although only to machinery, and not to merchandise or other insured goods), being again relevant the analysis of the Specific Exclusions of this guarantee in case one is foreseen for electrical damage.

[1] Fuente: CEOE.

[2] Morningstar DBRS estima que las aseguradoras podrían sufrir pérdidas de hasta 300 millones de euros como consecuencia del apagón.

Nor can we lose sight of the possible fit of profit losses that businesses and industries may have incurred under the Loss of Profit guarantees (generic LP, LP Customers and Suppliers, and Impossibility of Access, among others).

- In this respect, it should be remembered that, in the Spanish insurance market, most policies require the existence of covered material damage to trigger the coverage of this type of guarantees[3]. Therefore, in those cases in which there is no material damage covered under the policy, loss of profits, a priori, should not be covered either.

- However, in cases where there has been material damage that activates LP's guarantees, the debate could focus on analysing whether the loss derives from the material damage covered under the policy or on contrary, the loss derives from the interruption of the supply. This distinction is not a minor issue and may become particularly relevant when, after the supply has been re-established, damage persists, preventing the resumption of the activity.

Regarding the "causality test", the Spanish Courts that have analysed the coverage of loss of profits have pointed out that the essential thing to determine whether there is coverage, is to examine whether there is a cause-effect relationship between the event that triggers the coverage loss of profits and the damages claimed[4]. That is to say, "whether the precedent act that is presented as a cause has sufficient virtuality for the harmful effect produced to derive from it (...)".

Therefore, it will be decisive to know what the cause or antecedent of the damage suffered by the insured party really is, given that, depending on this, it will be possible to determine if the guarantees for Loss of Profits are activated. It will also be relevant to review the excess of the policy given that, even if there is coverage, it is possible that the losses are below the amount or period fixed as excess.

Finally, we believe that extra costs incurred by insureds to maintain productive activity or to mitigate damage to insured property could also give rise to coverage disputes.

In some policies, the extra-costs guarantees only cover those costs that are necessary to prevent or mitigate damage. In these cases, the insured will have to prove that costs incurred were not only destined to maintain the activity, but that, had not been incurred, would have resulted on a loss of merchandise, damage to machinery or, ultimately, any damage covered by the policy.

However, in some clauses, the extra-cost guarantees are quite broad, covering any extra costs necessary to maintain productive activity. In these cases, the insured could try to claim any extra costs incurred as a result of the blackout, even if they have not prevented the occurrence of any material damage.

Liability Policies (casualty).

According to Civil Liability, when faced with the possible initiation of actions against the electrical agents as the cause of the incident, we must approach the sectorial regulations that analyse it.

Specifically, Law 24/2013, 26 December, on the Electricity Sector, in its articles 40.1 and 46; and Royal Decree

1955/2000, of 1 December, which regulates the activities of transmission, distribution, marketing, supply and authorisation procedures for electricity facilities, in its article 105, establishes the obligations of electricity agents (distributors, marketers, etc.) relating to the continuity, maintenance and restoration of the electricity service.

With respect to this regulation, electricity suppliers will only be exempted from their obligation to provide the service in the event that force majeure is proven, this being defined as an event considered unforeseeable or unavoidable, and which also has an origin unrelated to the electricity supply itself. Nevertheless, under the aforementioned article 105, force majeure shall not be considered to exist when events derived from an inadequate electrical installation, lack of foresight in the operation of the electrical networks or those derived from the operation of the electricity company itself.

Albeit there are no precedents relatable to what happened on 28 April, the fact is that there is case law condemning electricity companies for acts relating to poor maintenance of electrical installations[5] or even atmospheric phenomena[6] which, though could have been foreseen, were not controlled.

It should also be noted that case law has defined liability in this area as strict liability, meaning that it is the responsibility of the agent causing the risk to take the different precautionary measures to avoid the damage. In other words, the electricity agents must act in anticipation, providing due diligence to avoid the adverse result that the cut-off may produce, and must prove the absence of their liability in the event occurred.

[3] Sentencias del Tribunal Supremo (Sala de lo Civil) n.º 602/2025, n.º 603/2025 y n.º 604/2025 de 29 de abril.

[4] Sentencia de la AP Granada n.º 251/2022, de 21 de septiembre (JUR 2022\349779) y Sentencia del JPI n.º 10 de Palma de Mallorca n.º 369/2023, entre otras.

[5] Sentencia del Tribunal Supremo (Sala de lo Civil) n.º 124/2017 de 24 de febrero (RJ\2017\826).

[6] Sentencia de la AP Zamora n.º 115/2009, de 15 de mayo de 2009.

Could this have a potential impact for the Insurance Compensation Consortium?

Although, as we have already mentioned, the cause of the power cut is currently unknown, with the information available, everything points to fact that we are not facing a consortium risk.

In this, article 6. 1) of Royal Decree 300/2004, of 20 February, which approves the Regulation of Extraordinary Risks Insurance, excludes from coverage by the Insurance Compensation Consortium "damage or loss suffered as a consequence of a cut or alteration in the external supply of electrical energy, (...) even if these alterations derive from a cause included in the coverage of extraordinary risks".

Conclusion.

In short, the blackout suffered on Monday 28 April has undoubtedly become one of the challenges of this new year for the insurance sector.

On the one hand, because damage policies will receive notifications of claims that may be covered by many of the main guarantees, such as the General All Risks Guarantee for Material Damage, Electrical Damage, Refrigerated Goods, Machinery Breakdown, among others. With the risk that even loss of profits may be claimed, opening up an interesting interpretative debate.

On the other hand, because, as far as civil liability policies are concerned, considering the applicable regulations, the very definition of force majeure and the interpretation of our courts, the scenario of exoneration of electricity operators faces great difficulties.

Therefore, while many of these questions will be resolved when the specific cause of the blackout is confirmed by the competent authorities, the analysis of the impact of this incident on insurers will be a complex task, which will require a great deal of effort in the sector, but which will eventually serve as a precedent for many other events to come.



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