

## **“INTERRUPTION OF BUSINESS” TERM IN INSURANCE POLICY CAN INCLUDE DECREASED PATRONAGE**

January 28, 2010 | Law Alerts, News

*Aztar Corporation v. U.S. Fire*  
Ct. Appeals, Div. One, January 28, 2010

Authored By The [JSH Appellate Team](#)

This appeal addressed a coverage dispute regarding whether insurance benefits are provided for the interruption of business when a building extension collapses during construction. Specifically, the casino whose extension collapsed sought to recover business losses for decreased patronage even though the collapse did not affect any of the pre-existing structure already in operation.

The court of appeals determined that the term “interruption of business” did include decreased patronage even though the pre-existing structure (where all business was being conducted) was not damaged. The court noted despite the casino being fully functional even after the collapse, changes to ingress and egress caused by the collapse affected the casino’s patronage – which was fairly considered an interruption in business. The court nevertheless affirmed summary judgment for the insurers because the expansion was not a “contributing property” under the policy’s terms, thus contingent business interruption coverage was not triggered. Specifically, the expansion was not completed nor was it opened for business.

Finally, the court upheld the trial court’s award of attorneys’ fees to the insurers, even though the insurers’ applications were filed after the 20 day deadline. The court held that absent prejudice, it is not an abuse of discretion for the trial court to grant untimely applications for attorneys’ fees.