

COVID-19 and Business Income Insurance

Update II – March 27, 2020

As this COVID-19 crisis continues, I hope you are remaining healthy and well. I realize that for many of you your business is not. I feel for all businesses and individuals who are severely affected by this unforeseen event. I wish the news about coverage is better, but it is not. There has been no change in the stance of the insurers with regards to the denial of Business Income related claims. I do not enjoy being the bearer of this news as I want you to be covered as much as you do!

On Thursday, March 19, the Independent Insurance Agents of America along with the Council of Insurance Agents and Brokers, the National Association of Mutual Insurance Companies, and the American Property Casualty Insurance Association, responded to a bipartisan letter from members of Congress. This letter from Congress urged the insurance industry to retroactively include income losses caused from the coronavirus.

These four industry associations responded jointly in writing to Congress saying that business interruption policies do not, and was not, designed to provide coverage against communicable diseases such as coronavirus. This is what all are saying regarding coverage. It does show the first time Congress inquired about this issue. This could be where hope lies if Congress continues involvement in this subject mandating some coverage.

As I previously have written, start to keep records of your income loss as who knows what extensions may be forced on the insurance industry to provide some sort of coverage. As we have seen throughout this this crisis nothing is out of the question.

I caution you to beware of some in my industry who say there is coverage for the coronavirus. Just last Thursday, as mentioned above, all of the major insurance associations in America said, "business interruption policies do not, and were not, designed to provide coverage against

communicable diseases such as coronavirus.” The individuals in my industry who are spreading this false hope and misinformation that coverage exists should be ashamed.

What these individuals of misinformation may be wrongly interpreting is that The Insurance Services Office (ISO), the body that creates and issues most insurance forms, a few days ago released 2 optional endorsements for use with commercial property. These forms are in paper form only and are currently unenforceable. They are written to provide limited business income coverage for circumstances related to the coronavirus. These forms have not been filed in any state or and have not been adopted by any insurance company. I am also told these 2 optional endorsements are not being added to the ISO portfolio of forms. These may be something for the future but as of now they are not valid or attainable.

Some insurance carriers have given some consideration to those in the restaurant industry and similar type businesses (e.g. bakeries, delis, etc.) who are turning towards new or expanded delivery service options. If you currently have a commercial automobile policy in the business name make sure it includes Hired and Non Owned Auto Coverage. This may protect your business from automobile liability claims resulting from your delivery operations used by a non owned company vehicle.

For those who do not have a Commercial Auto Policy if you are now delivering and using hired vehicles and/or non owned vehicles be careful. Inquire about adding Hired and/or Non-Owned Auto Liability coverage to your package policy. In the past most insurance companies would not consider Hired and/or Non-Owned Auto Liability coverage for those who deliver. Some insurance companies to assist businesses in this time of crisis, who are now delivering may add Hired and/or Non-Owned Auto coverage. If you are hiring vehicles or using non company owned vehicles to do delivery, you have an exposure if that vehicle is involved in an accident. Hired and Non Owned Auto coverage may provide that protection. Usually the premium for each coverage is less than \$180. If this situation applies to you, please give me a call.

Some insurance companies are considering assistance with premium payments however none have come out with an exact program. I will let you know when more is known.

For now, continue to do all you can to stay safe and healthy. When we get through this and we will; and you are able to determine your exact economic loss with documentation which you have started to compile, we will help you submit a claim. It is at that time the insurance company will individually and officially review your situation to accept or deny coverage.

My hope is that you maintain hopeful. Have faith and hope that we all will get through this. By letting faith and hope increase, fear and anxiety decreases. All the best!

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COVID-19 ADDITIONAL DEVELOPMENTS

UPDATE II-A

March 27, 2020

After I finished writing Update II, some additional developments relating to the virus have occurred.

1. **Political Pressure** - Insurers are increasingly facing political pressure to pay what could be an enormous sum in coronavirus claims even though many carriers state their insurance policies exclude pandemics.

Anger on Capitol Hill is growing over moves by insurers to deny claims. The insurance industry is so alarmed at the prospect of a massive payout that it's rushing to put together a plan to get Washington off its back.

Insurance trade groups are weighing whether to propose a federal program that would direct funds to businesses disrupted by the pandemic. This could be something similar to the Victims Compensation Fund set up after the 9/11 terrorist attacks.

Industry insiders argue that it's a way insurers can help the country during a deep economic slump while also heading off bipartisan pressure from Congress to pay out tens of billions of dollars to businesses that have been forced to close their doors.

The National Restaurant Association has called for the creation of a \$100 billion federally backed business interruption insurance program to get funds to businesses in an expedited time frame.

In addition to the plan just approved by Congress, one proposal that circulated among insurance lobbyists in the last few days envisioned a "Federal Business Interruption and Workers' Protection Recovery Fund" that would make assistance available to all businesses.

Though coverage is being denied because of the policy wording, there still may be hope!

2. Beware of **scams** that are coming in the disguise of coronavirus solutions. There has been an increase of fake emails on the subject of the coronavirus which are becoming an outlet for malware. Emails with documents claim to have a list of precautionary measures against the infection can be phishing attempts. A cyber security expert stated, “we have seen links or attachments that deliver information stealing malware which can steal the person’s website and bank credentials”.
3. **Liberty Mutual** has announced they are prepared to waive late fees for any customer who is unable to make a payment on time due to COVID-19. They are also in the lead to offer what they call a temporary change to their underwriting appetite being open to write Hired and/or Non Owned Auto liability to retailers now doing delivery. They are open to doing this this so as long as delivery is a temporary operational change.
4. The first major **lawsuit** declaring the policies should cover losses and expenses related to the COVID-19 pandemic and infection. It was filed by the Chickasaw Nation Department of Commerce and the Choctaw Nation of Oklahoma after the two tribes were forced to shut their casino operations amid the coronavirus pandemic.
5. Robert Hartwig, PhD, CPCU, a recognized expert on risk and insurance who is the President and Economist for the **Insurance Information Institute** in New York was recently questioned on some insurance issues as they relate to COVID-19:
 - a. When asked whether loss of business associated with COVID-19 shutdowns and slowdowns is covered by such policies, Dr. Hartwig answered no because the Business Income coverage is triggered by direct physical loss or damage as the result of a covered cause of loss such as fire, explosion, wind, etc.. He elaborated saying the actual or possible presence of a virus

does not fit that definition nor does the fact that closures of the business due to an act of civil authority affect this determination. He concluded in addition, virtually all policies contain virus and bacterium exclusion.

- b. When asked about New Jersey and other states proposing legislation eliminating exclusionary language in insurance policies, Dr. Hartwig stated the N.J. proposal was tabled and there is zero chance that elimination of exclusionary language would be upheld in courts. This would amount to retroactively rewriting longstanding contract provisions and would be illegal and unconstitutional by any standard.

Please E Mail me should you have any questions about your insurance and COVID-19. I will send another update next week if the news calls for it.

Once again stay hopeful, safe and healthy!

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