

## **Do I have Business Income coverage for my financial losses caused by the Coronavirus?**

As the Coronavirus (COVID-19) outbreak continues to evolve, more businesses are feeling the negative impact. Life as we know it is changing by the hour. Events that are happening have never occurred in our lifetime, with uncertainty prevailing. Uncertainty also relates to questions about the impact of this pandemic on insurance coverages. ‘

If you are looking for a direct answer to the question do you have coverage for your income losses as a result that is all going on with the coronavirus, the answer right now is no one knows, but not likely. While insurance companies debate whether there is or isn't coverage we should always submit a possible claim to the insurance company and let them determine. As seen in the past you never can fully predict the outcome. With superstorm Sandy, losses that were thought to be denied were covered.

It is just too early to say how the insurers and the courts will rule on this question. There are various insurance clauses and verbiage within the insurance contract that point to the fact that coverage will be denied, but no one is absolutely sure.

The trigger for any property insurance policy and resulting time element coverage is physical damage to insured property by an insured peril. Insurers are likely to argue that the introduction of a virus does not constitute direct physical loss or damage to insured property nor is it a covered peril. While the introduction of COVID-19 to insured property may be considered a fortuitous (unforeseen) event (similar to other triggers that are typically covered under property policies), it is most likely not covered.

Insurers may point to verbiage related to loss or damage to the property. Also, a policy may contain a contamination, virus, disease or illness exclusion. Most property policies, including ISO, specific insurer forms and most manuscript policies, do not cover a loss resulting from a virus.

Business Income Coverage is usually purchased as part of a Commercial Property Policy. Business Income insurance is intended to protect businesses against income losses sustained as a result of disruptions to their operations. Business Income coverage typically applies when a policyholder suffers "direct physical loss of or damage to" covered property. Insurers may dispute whether a disease outbreak like coronavirus constitutes "physical loss" or "damage" to your property.

Keep in mind, however, that courts across the country have not settled upon a uniform rule for when insured property has suffered a "physical loss." Prior to the coronavirus, courts in a number of jurisdictions have determined that contamination and other incidents that render property uninhabitable or otherwise unfit for its intended use constitutes a "physical loss" sufficient to trigger business interruption coverage. The determination of whether "physical loss" has occurred will therefore continue to require a close examination of the particular facts of each case. If your business location, which as of today most are not, is considered uninhabitable or unfit, then coverage could exist. Most income losses as a result of this pandemic are being caused by the public just staying away and not that locations are uninhabitable.

Contingent business interruption coverage, which insures losses due to suspension of operations by a supplier, typically applies if the supplier suffers "physical loss" or "damage" that would be covered if sustained at the policyholder's property.

Civil or military authority coverage insures losses when a government order restricts access to insured property. This usually applies if that order is the "direct result" of physical loss or damage of the same type insured by the policy.

Many commercial property insurance policies provide coverage for business income losses sustained when a "civil authority" prohibits or impairs access to the policyholder's premises. Depending upon its specific wording, most policy's "civil authority" coverage requires that once again the access restriction result from "physical loss" by a covered cause of loss. Possibly, in the event that a federal, state, or local governmental authority limits access to or from areas where active transmission of an

infectious disease has been identified, "civil authority" coverage may respond with insurance for income losses of affected businesses.

Civil authority coverage might cover a coronavirus claim. Can one successfully argue that property rendered unfit for public gatherings or declared to be closed by a governmental entity because of contamination or the fear of contamination qualify as a physical loss? Once again, uncertainty.

I believe most carriers will use the no "direct physical loss" provision to deny coverage. They will ask, is the coronavirus financial impact on your operation result in a direct "physical loss"? Most claimants would state no. With all that said some courts in the past have held that covered "physical loss" encompasses incidents analogous to disease-caused disruption, such as environmental contamination, which render property unfit for its normal use. Does your property have environmental contamination? Is your property considered unfit for normal use? Right now most would have to say no to those possible coverage granting clauses.

At this early point of these coverage inquiries caused by the coronavirus, one thing is perfectly clear; there are no clear answers.

In addition to Business Income coverage issues there are other lines of insurance that could be affected by this coronavirus outbreak.

1. General liability insurance also may be implicated. There could be third-party bodily injury claims resulting from exposure to harmful conditions or failures to exercise reasonable care in guarding against the risk of exposure to the virus.
2. Workers Compensation will cover bodily injury by accident or bodily injury by disease. A disease must be covered by conditions of employment, but ordinary diseases of life are not covered.
3. Directors and Officers Liability insurance could be impacted if shareholder litigation occurs alleging a company's failure to develop adequate contingency plans or to observe recommended or required protocols.
4. Employment Practice Liability insurance also may be affected if employees allege they were mistreated when suspected of being infected.

What should you do this very moment? Right now instead of trying to determine if there is coverage and how much coverage there may be, some actions you can take include:

1. Do all you can, as most of you are doing, to keep yourself, your employees and customer/clients healthy.
2. A most important action that you should enact today is to start to document what your income loss is. A sports training facility told me that their income has dropped drastically in the past three days as lessons are down because most baseball leagues in the area have cancelled or postponed their seasons. I instructed that insured to keep an exact record of who cancelled and why. Did the team or person cancel because something came up or did they cancel as a result actions taken or fear of the coronavirus? You will have a much stronger case with any Business Income claim you submit if you can produce daily, detailed loss income records.
3. In this time of crisis, reach out to those you come in contact with physical help and words of hope. Try not to let the fear of the situation reduce the faith that we all should have that we will get through this.

What does this all mean? If you are having an interruption of your business caused by the coronavirus, as of today, don't expect to have an easy time getting the claim approved. The standard policy wording in most cases does not support coverage which would result in a claim settlement. You are encouraged to submit any claims that arise from COVID-19 once your economic loss can be calculated. We will have the insurance carrier review your claim individually.

Stay hopeful and healthy!

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