

Maximizing Recovery From Insurance For Your COVID-19 Losses

Legal Alert
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COVID-19 is drastically changing the environment for business. Most businesses face mounting losses due to the existence of the virus, public reactions to it, and the government's increasing efforts to combat it.

This means it's time for businesses to carefully review their insurance policies to determine if any of the policy provisions they paid for could be interpreted to cover any of their losses under their particular state's insurance laws. In many cases, they may. But it would be a mistake to assume that your insurance company is standing by, ready to step in and write checks to businesses suffering from losses flowing from the virus. Initial comments by some representatives of the insurance industry suggest that insurers will work hard to limit their responsibilities to policy holders.

Coverage for Lost Income from Business Interruption

Perhaps the most immediate loss most businesses will face is due to lost income and increased operating expenses driven by the impacts of COVID-19. A number of insurers offer different products that can be interpreted to respond to such losses. The most common appears in first-party property insurance policies which, as the name suggests, insure a business's own buildings and their contents. These policies often contain some form of insurance for business interruption losses, which can go by various names, including coverage for "business income with extra expense" or "time element" coverage. These typically respond when there has been "physical loss" or "physical damage" to property the policy insures.

But these policies may also offer coverage that is triggered by physical loss or damage to other property that your policy does not insure. For example, some policies now contain "contingent" business income coverage, which can protect you from business

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interruption losses resulting from physical loss or damage to your customers or suppliers.

Many also offer what is known as Civil Authority coverage if your operations are impaired by a government order—for example, directing you to close your business for two weeks—that is issued in response to physical loss or damage that may be quite some distance away from the premises your policy insures. Other policies may contain “ingress/egress” coverage that is intended to cover business interruptions due to the impairment of access to your business due to nearby damage (for example, if a bridge is out). Some businesses may have separately bought supply chain coverage, which operates similarly to contingent business income coverage, but does not require physical loss or damage and which offers broader protections against supply chain disruptions.

Expected Responses from Insurers

Insurers can be expected to raise several grounds for denying coverage. Two are worth noting here. First, insurance companies may deny that viral contamination qualifies as direct physical loss or damage. Policies do not define terms like “direct physical loss.” Courts will have to sort this out; you will want a good lawyer in your corner. In other contexts, some courts have recognized that contamination that renders a structure unsuitable for habitation or use amounts to direct physical loss.

Second, some policies may contain exclusions for matters caused by “fungus,” “virus,” “pathogen,” “biological agents,” or “communicable disease.” State laws often restrict the application or effect of such exclusions, if they happen to be in your policy.

What to Do in Uncharted Territory

Finally, even if your insurance company accepts your claim, you may be faced with a lengthy dispute over how to compute the amount of your loss. Should you look at sales trends over the last year? The value of your lost productive capacity? It depends on the policy, the facts, the law in your particular state, and your business. From the very beginning you will want to work with consultants who are experienced in supporting you as you present your claim to your insurer.

Keep in mind that this is the first pandemic to reach our shores in a century. Consequently, few if any insurance companies drafted the policies they sold with such an event foremost in their thought. Moreover, insurance policies that potentially cover business interruption losses are written on a wide variety of forms; your policy is not “one size fits all.” Courts have yet to say exactly what these various policies will cover when it comes to business interruption losses due to novel coronavirus. If you think you’ve suffered such losses, you’ll need a lawyer in your corner who is familiar with subtle variations between the specific wording of different forms, and with the detailed nuances of the law in your particular state.

Please contact any member of Foster Garvey's [Insurance Coverage](#) group to examine your business's specific policy wording and advise how to maximize your chances of a successful insurance recovery with respect to its COVID-19 related losses.

Of course, COVID-19 threatens more than interruptions to your business. You or your directors and officers may be faced with claims by shareholders, customers, or employees who are disgruntled by your handling of the current crisis or the events leading up to it. Look for more on that in a future post.