

BUSINESS INTERRUPTION INSURANCE

The COVID-19 virus is an unprecedented global crisis in our time. Policyholders are struggling with losses arising out of business closings, lost revenue, labor and employment issues and other potential losses they believe should be covered by their Business Interruption insurance.

Insurers are generally denying Business Interruption claims for losses brought on from government-ordered business closures from the COVID-19 pandemic on the basis the virus has not caused “physical loss or damage” to an insured’s property from a “covered peril.”

Insurers are making their position on coverage clear.

Chubb posted a Notice on its website: “Business Interruption Insurance Business interruption insurance generally covers losses to your business’ income that result from disruption of your business. The disruption must be caused by physical loss or damage to your property by a “covered peril.” The presence of an infectious agent or communicable disease at a location where there is covered property generally will not mean that property has suffered “physical loss or damage” under your policy. Generally, “physical loss or damage” means that the physical structure or physical characteristics of the property have been altered by a “covered peril.”

The Hartford website says: “Most property insurance includes business interruption coverage, which often includes civil authority and dependent property coverage. This is generally designed to cover losses that result from direct physical loss or damage to property caused by hurricanes, fires, wind damage or theft and is not designed to apply in the case of a virus.”

Travelers says: “Insurance for business interruption can provide coverage when a policyholder suffers a loss of income due to direct physical loss or damage to covered property at its location or another location. It does not cover loss of income due to market conditions, a slowdown of economic activity or a general fear of contamination. Nor does the policy provide coverage for cancellations, suspensions and shutdowns that are implemented to limit the spread of the coronavirus. These are not a result of direct physical loss or damage. Accordingly, business interruption losses resulting from these types of events do not present covered losses under our property coverage forms. Even if there has been direct physical loss or damage to property, your policy contains a number of exclusions that are likely to apply to business interruption losses. The most important exclusion to note is the exclusion for losses resulting from a virus or bacteria, which would include coronavirus.”

Insureds are fighting back.

Insureds are filing lawsuits, called declaratory judgment actions, asking courts to interpret policies and rule that coverage exists for losses to their non-essential businesses caused by coronavirus-related government-mandated closures. Those lawsuits are only in the early stages.

Not all insurance policies are written the same. Being denied your right to occupy and operate your place of business due to Executive Orders or other government mandates might be enough to trigger coverage under some policies. Each policy should be reviewed and analyzed to determine the scope of their respective coverages including the insuring agreements, applicable exclusions, as well as various other potential claims that might be available.

Young Basile's Litigation Team has lawyers experienced in complex insurance coverage and claims disputes and stand ready to help.¹

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