

Insurance Claims for COVID-19 Business Interruption – Make Your Best Case

You probably anticipated that your business insurance would provide some relief for the impact of COVID-19, since it likely included coverage for general risk, business interruption, contingent business loss, or civil authority actions. However, when confronted with a novel event like the one we are experiencing now, your insurance providers may be construing these policies to deny coverage to you. You may have already experienced submitting a business interruption claim and having it denied on the grounds that COVID-19 does not constitute “property damage,” or your losses fall under certain policy exclusions. If you haven’t submitted a claim, we encourage you to consider doing so soon.

It is important that each business understands its policy, as policy language varies widely, and coverage determinations are generally made on a case-by-case basis. Regardless of your policy, coverage for property damage or economic loss often requires direct physical loss. Many insurers are taking the position that exposure to the virus, or economic loss stemming from the virus, does not constitute “direct physical loss.” However, some courts in analogous situations have found that loss of use and function, as many businesses are experiencing now, may constitute physical damage when viewed in the overall context. In addition, your policy may contain additional coverage, such as decontamination coverage, public relations coverage, event cancellation coverage, or pollution cleanup, which may apply to COVID-19 related expenses and loss. Making your case for coverage requires your understanding all of the various provisions in your policy to allow you to maximize benefits. **Do not give up just because the insurance company says there is no coverage.**

Recognizing the enormous impact of COVID-19 on businesses, the federal government and certain states have attempted to shift the economic burden of the COVID-19 crisis on insurers. In mid-March 2020, a bipartisan group of congressional representatives wrote to leadership at the American Property Casualty Insurance Association, National Association of Mutual Insurance Companies, Independent Insurance Agents and Brokers of America, and Council of Insurance Agents and Brokers, encouraging insurance companies to recognize financial loss due to COVID-19 as part of policyholders’ business interruption coverage. Seven states currently have proposed bills that would require commercial property insurers to retroactively cover losses that insureds have accumulated because of the pandemic. Nevertheless, insurance companies have remained steadfast in their interpretation of certain clauses as excluding the COVID-19 pandemic. We expect that the issue of whether mandatory COVID-19 closures constitute “physical damage” is one that will be litigated extensively in the near future.

Should your insurance claim be denied or if you have questions about the technicalities of your policy coverage, we would be happy to help you. We can carefully evaluate your policies and guide you to determine the best strategy for anticipating/challenging the insurance company’s denial so that your business is in the best position to receive the benefits to which you are entitled. Keep in mind that there are often times restrictions in policies related to providing notice of a claim and challenging denials.

Visit our COVID-19 Insight Center for our latest legislative and legal updates, articles, and resources.

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