



Coronavirus and Business Interruption Coverage for Policyholders

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With a death toll of more than 2,700 and more than 80,000 infected, Policyholders' measures and governmental efforts to contain the spread of the Coronavirus has interrupted business and disrupted supply chains worldwide. Policyholders fearing the threat of the Coronavirus to their normal business operations should review if their first-party insurance would respond to the Coronavirus threat.

Although lines of insurance typically held by individuals like health, workers compensation and life will likely cover Coronavirus-related claims, this is likely not the case for business interruption coverage. There are a number of potential obstacles to coverage for such business interruption losses. The most significant (and difficult to overcome) is that a Coronavirus-situation that negatively impacts business income, likely fails to satisfy the direct physical loss or damage to property requirement that is necessary to trigger such first-party coverage.

Traditional business interruption insurance coverage provides relief to a policyholder for lost profit and extra expenses when their business operations are disrupted by "physical loss or damage" to insured property. Loss of income and extra expense resulting from such physical loss or damage to the property of a customer or supplier is also typically covered under "contingent business interruption" insurance.

In the Coronavirus context, business interruption coverage may attach if it is proven that the pathogen has physically damaged property in the form of viral contamination. It is anticipated, however, that insurers are likely to argue that business interruption coverage is not triggered because there is no physical loss or damage to property in a traditional sense, as a result of the pathogen. Insurers are also likely to rely upon pollution exclusions as a defense to coverage for such claims - but whether viruses are pollutants would be a burden the insurer would have to bear to avoid

coverage. Some policies also contain communicable disease exclusions that may prevent coverage for Coronavirus-related claims. In any event, the specific facts, relevant wording of the policy and the applicable law will determine the availability of coverage for such Coronavirus-related exposures.

Coverage for Coronavirus-related business interruption losses may be available, where civil authorities order the closure or restrict access to insured premises. However, even if a civil authority orders quarantines or closes a business or restricts access to insured premises, traditional first-party policies still require that the governmental order stems from direct physical loss or damage to property.

The Insurance Services Office "ISO" has responded to the ongoing Coronavirus outbreak and its threat to business income by issuing endorsements for use with commercial property forms that do not condition coverage upon direct physical loss or damage to property. The ISO Forms¹ provide limited business interruption coverage due to actions taken by civil authorities to avoid or limit infection or spread by or from the Coronavirus. The two Forms, neither of which is numbered or has been filed with any insurance regulator at the time of this writing, are: attributable

1. Business Interruption: Limited Coverage for Certain Civil Authority Orders Relating to Coronavirus; and
2. Business Interruption: Limited Coverage for Certain Civil Authority Orders Relating to Coronavirus (Including Orders Restricting Some Modes of Public Transportation).

The first Form would cover actual loss of business income or necessary extra expense incurred by the insured because a civil authority ordered the closing of the premises or ordered all or part of the premises to be put under quarantine to prevent infection by or spread of the Coronavirus. The coverage would apply even if the governmental order is enforced based on suspicion of risk of contagion. For instance, if a neighborhood, region or area is known to be affected by the virus, the civil authority may order businesses closed even if no disease is yet present in the specific premises and thus coverage would apply in those instances to scheduled premises.

The second Form is nearly identical to the first Form, but expressly extends coverage where a civil authority closes or restricts the use of public transportation like public bus, rail or ferry lines, or related stations and terminals that service areas where the insured scheduled premises are located.

Both Forms would provide contingent business interruption coverage affecting dependent properties. For example, if a policyholders' operations are suspended because it relies on services or products furnished by an unrelated company, in China or elsewhere, that is impacted by the Coronavirus, and that other company is closed by a civil authority to prevent the spread of the Coronavirus, the endorsement would provide business interruption coverage to the policyholder for any resulting losses.

Additionally, coverage would attach upon suspension of the business for the time limit shown in the schedule and while the civil authority orders are in effect. The applicable limit shown in the schedule of

¹All references to ISO Forms contained herein are attributed to Barlow, Christine G., CPCU, Coronavirus Spurs ISO to Provide Business Interruption Endorsement, NU Property Casualty 360, Instant Insights Business of Insurance, February 10, 2020, <https://www.propertycasualty360.com/2020/02/10/iso-provides-business-interruption-endorsement-in-response-to-coronavirus-414-171888/> (last visited February 25, 2020).

the Forms is the most the insurer would pay in one policy year regardless of the number of occurrences.

The Forms contain exclusions such as clean-up, disinfection or costs of disposing contaminated or suspected contaminated property or bodily fluids or waste material; costs for testing or monitoring for the presence of the virus; costs to replace property suspected to be contaminated; fines and penalties; as well as the intentional spread of the virus with the intent to cause disease, damage, fear or anxiety. Interestingly, the Forms would however not be affected by existing exclusions related to other viruses, bacteria or pollution. It also should be noted that restrictions imposed by the company itself affecting business income would not be covered by the Forms which only applies to orders by civil authorities barring access to the insured's property. Further, if a single occurrence begins in an annual policy period and continues in a second annual policy period, only the limit applicable to the initial policy period would apply.

The World Health Organization declared the Wuhan Coronavirus a "public health emergency of international concern." Policyholders should accurately document any lost profits and extra expense incurred as a result of the coronavirus outbreak and be aware of their duty to mitigate losses attributable to the virus outbreak. Policyholders should take steps to confirm they are duly protected for any business interruptions to the extent the geographic area or business suppliers and/or stakeholders are impacted by the virus.

Consequently, it is important that policyholders review their policies carefully, and when necessary, consult with coverage counsel about the scope and availability of coverage and strategies for maximizing insurance recovery for any Coronavirus-related claims that arise.

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