

COVID-19 Business Interruption Challenges

Accessing Coverage

- Is direct physical loss or damage required?
- Does presence of virus qualify as physical damage
- Contingent/dependent property losses
- Civil authority
- Ingress/Egress
- Service interruption
- Virus Exclusions

Coverage Obligations

Don't lose coverage because of an oversight!

- Timely notice
- Protect evidence, including computer information and e-mails
- Responding to insurers/outside adjusters
- Proof of claim compliance
- Preservation of property (sue and labor)
- Avoidance of voluntary payments
- Independent appraisal (sometimes)
- Statutory/contractual limitation of action periods

Determining Whether Losses May Be Covered:

Step One

- Was virus present on property?
- Did the government order your property to be closed?
- Did the government restrict access to your property?
- Are contingent business interruption (CBI) coverages in place for both direct CBI and indirect CBI events?
- Does policy explicitly exclude viruses?

Step Two: Considering Claims

- In-house Team
 - Risk Manager, Claims Manager, Safety Manager, Corporate Counsel, Operations, Finance, IT
- Outside Experts
 - Brokers/Claims Advocacy (consultants), Forensic Accounting, Claims Engineering, Legal

Types of Coverage - Civil Authority and Service Interruption

Losses caused by acts of civil authority that impact access to insured facilities

- May apply when government acts prohibit access to property of suppliers, providers, or vendors
- Some policies require a prohibition of access
- Often limited to 30 days from date of civil action prohibiting access

Damage to utility (electric, gas, data) interrupts service to your location

- Damage to overhead transmission and distribution lines sometimes excluded
- Caused by covered peril (flood/storm exclusions may negate)
- Usually contains a waiting period
- What happens when utility intentionally shuts down grid to prevent further damage?

Contingent Business Interruption

- Direct physical loss or damage to a dependent property (supplier or customer)
- The loss or damage is caused by a covered cause of loss
- The loss results in a suspension of operations at a location of supplier and customer

Issues That Impact Settlement

- Period of Indemnity
- Multiple Perils
- Consequential Loss
- Nuclear Exclusions
- Rolling Blackout
- Actual Loss Sustained
- Loss of Market/Market Conditions
- Idle Period
- Concurrent Causation
- Contingent Business Interruption

Measurement of the Loss - Maximize Recovery by Allocating to the Right Coverage Buckets

Physical Damage

- Buildings, equipment, inventory
- Sublimits: debris removal, expediting expense
- Exclusions: nuclear, environmental

Time Element Losses

- Business interruption/mitigating costs
- Inefficiencies and additional costs to operate = extra expenses
- The loss results in a suspension of operations at a location of supplier and customer

Time Element Extensions

- Extended period of indemnity
- Contingent time element/CBI
- Service interruption
- Ingress/egress, (civil and military authority)

Soft Costs

- Delay
- Loss of Use
- Loss of Market

Key Takeaways

You will be faced with an event... it's just a matter of time:

Be prepared

- Review coverage
- Have your team in place
- Have your facts and evidence in place

Be Proactive

- Take charge of the claims process

Differences are inevitable

- Assess your options