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FAQ: Covid-19 Business Interruption Claims

In the weeks since the COVID-19 pandemic began in the United States, we've received many questions from clients. Here are the most common ones, along with current guidance.

Q: What is business interruption coverage?

A: Business interruption coverage is mostly found in commercial property insurance policies. Business interruption coverage generally provides coverage for an insured's lost revenues and extra expenses stemming from a covered loss that shuts down the insured's business.

Q: When is business interruption coverage triggered?

A: Business interruption coverage requires a covered loss. Coverage generally is triggered when there is direct physical loss (or direct physical damage) to the insured's property caused by a covered cause of loss, and which results in monetary loss to the insured. The monetary loss should be in the form of lost revenues and certain limited extra expenses to get the business up and running again.

Q: What are examples of a direct physical loss?

A: Examples include, but are not limited to, fire damage, wind damage, and certain types of water damage. Additional types of intangible damages (*e.g.*, electronic data) generally require special endorsements or specialized policies.

Q: What is a covered cause of loss?

A: A covered cause of loss refers to the causes of the physical damage that an insurance company has agreed to cover. For example, an insurance company may cover damage to a building caused by heavy rains, but may not cover damage caused by sewer backup, although both are types of water damage.

Q: Does COVID-19 trigger business interruption coverage?

A: The bulk of decisions from courts would seem to suggest that COVID-19 does not cause a direct physical loss to property. However, it is too soon to know if the landscape will change.

Insurance companies likely will take the position that the virus itself does not result in direct physical loss, or direct physical damage, to property in response to a claim. Once sanitized, contaminated property returns to its original condition. It also is difficult to know whether property was contaminated by the virus because the virus cannot be seen. Many businesses closed in response to shelter-in-place orders, as opposed to reported cases of the virus.

A growing number of state legislatures are attempting to pass laws mandating business interruption coverage apply to COVID-19 losses. Policyholders should expect that if these bills become law, they will be challenged as unconstitutional.

Q: I've heard that shelter-in-place orders can trigger coverage? Is that true?

A: Some policies provide for civil authority coverage. Coverage will depend on the terms of the policy. Determine if the civil authority coverage still requires a direct physical loss or if, instead, it only requires access to the property to be prohibited because of civil authority. Even prohibited access, however, may require that access be prohibited by a physical barrier or barricade.

Q: I think I have a direct physical loss or civil authority coverage. Do any exclusions or limitations apply?

A: Policies with virus exclusions likely eliminate all possibility of coverage for a COVID-19 claim. However, as a matter of public policy, proposed state legislation, if passed and enforceable, generally would not permit insurance companies to enforce virus exclusions for COVID-19 business interruption claims.

Also be on the lookout for anti-concurrent causation clauses. Concurrent causation means that if there are two contributing causes of a loss—one covered and one not covered—there still will be coverage for the loss. Anti-concurrent causation clauses prohibit coverage for a loss caused by an excluded peril, even if a covered peril also contributed to the loss.

Q: Have courts examined the issue of coverage for COVID-19 claims?

A: Not yet. While lawsuits against insurers are starting to pour in, there simply is no direct precedent addressing the question of whether a pandemic virus such as COVID-19 triggers business interruption coverage. While the 1918 Spanish Flu pandemic no doubt shuttered some businesses, neither business interruption coverage nor coverage litigation were as commonplace as they are today.

Q: Will some insurers decide to accept business interruption coverage for COVID-19 claims?

A: Almost certainly not without court intervention or a significant incentive from the federal government to do so. The United States' GDP in 2019 was approximately \$21 trillion. The country already has been shut down for weeks, and there is no certainty about when the country will reopen for business or reopen at full steam. The amount of lost revenue to business during the shutdown will be staggering. Insurance companies likely do not have the reserves to cover all COVID-19-related losses. Simply put, COVID-19 coverage poses an existential threat to insurance companies.

Additional Information

If you have questions or concerns about your policy, please contact a member of Kutak Rock's national [Insurance Group](#).