



BUSINESS INTERRUPTION INSURANCE COVERAGE FOR COVID-19 LOSSES

March 19, 2020 | Alert

The economic damages caused by the COVID-19 pandemic will be significant. Business interruption insurance may cover the loss of income and other recoverable losses that your business suffers from the crisis. Now is the time to review your insurance policies to determine if coverage may exist.

Typically, business interruption coverage is insurance that replaces business income lost (and other damages) in a disaster, or as a result of a government action that causes operations to cease on a temporary basis. Generally, business interruption insurance is not sold as a separate policy but is either added to a property/casualty policy or included in a comprehensive business operations package policy as an addition to coverage or by an insurance policy rider.

Most business interruption policies typically cover lost profits, fixed costs, wages, loan expenses and some forms of accrued taxes. Most policies also contain a counterpart for business interruption coverage referred to as Civil Authority coverage, which applies when a business closure occurs when a governmental agency mandates such closures or denies access to covered property, or otherwise prohibits certain activity from occurring. These clauses also generally require physical damage to property and pertain to public safety threats in the aftermath of a natural disaster, act of terrorism or war.

Courts have been hesitant to award insurance coverage to businesses under these policies absent physical property damage, and insurance companies have further tightened policy language to make clear that property damage was a requirement for coverage. Nonetheless, recent declarations of emergency by Illinois Governor Pritzker and mayors, including those declarations shutting down restaurants, bars, and public places of amusement, plus prohibiting events expected to include more than

RELATED PROFESSIONALS

Christopher E. Kentra

Frederic A. Mendelsohn

Blake A. Roter

RELATED PRACTICE & INDUSTRIES

Insurance Recovery

Litigation



fifty attendees, may trigger this type of coverage.

Still, some policies may include an endorsement providing coverage for viruses, bacteria and disease, or simply include an “all-risks” property policy without any coverage exclusions (which courts narrowly construe anyway). Conversely, your insurance policies may have express exclusions. In 2006, the Insurance Services Office drafted an exclusion for use by insurers (known as the CP 01 40 07 06) to avoid damage claims due to any virus, bacterium, or other microorganism, and even though this language has been approved by many state insurance regulators, (1) not all exclusions are adopted as written, and (2) they may not always bar claims under policies. Creative coverage counsel may well have ways to avoid this or similar exclusions. For example, some cases have found the infiltration of gasses, ammonia, and lead to be covered, and other coverages in your insurance portfolio may apply to losses due to COVID-19.

In addition to Civil Authority coverage, insureds may have other coverage provisions that apply to damages caused by the COVID-19 pandemic, such as coverages applicable to the cancellation of events, conferences and trade shows. As to COVID-19, at least one lawsuit has already been filed to ensure coverage under an all risks policy. Further, at least one state is looking to enact legislation to cover COVID-19 claims, even if exclusions exist in a policy of insurance. Finally, some coverages apply to others who suffer covered insurance damage that adversely affect your business, like the shutdown of key suppliers, manufacturers who supply products relied upon by your business, or to whom your business sells products and services.

Now is a good time to review your insurance portfolio to determine the nature and extent of available coverage, based in the facts applicable to your business damages – including Civil Authority triggers, like restaurant and bar closures, various venue restrictions, and ordered quarantines and/or denials of access to geographic areas in which your buildings and/or offices are located.

Given this unique, everchanging crisis, it is important to understand the potential insurance coverage available for your business, the parameters of such coverage and the facts underlying any loss your business might suffer.

The attorneys in the Insurance Recovery Group at Burke, Warren, MacKay, & Serritella, P.C. are available to review insurance policies or portfolios and understand a business's situation, to look to all avenues of relief in the insurance context, including crafting claims to be asserted with your insurance carrier.