

COVID-19: Business Interruption and Other Coronavirus-Related Insurance Claims

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Fallout from the coronavirus crisis has caused many businesses to experience devastating financial consequences. The operations of businesses large and small have been seriously disrupted or have ceased as a result of the “Shelter-in-Place” or “Stay-at-Home” orders issued by many states, counties, and cities throughout the United States. These orders have required non-essential businesses to cease most or all in-person operations. Other businesses have had to voluntarily close their doors in response to the pandemic. As a result, many businesses are suffering significant negative impact to their revenues as well as incurring other major financial losses.

Insureds and insurers alike should be evaluating whether coverage exists under various business insurance policies for such financial losses. This article is intended to provide information regarding the types of “business interruption” claims that can be made under various types of insurance policies, as well as how and when those claims should be reported.

The bottom line, however, is that whether coverage exists for coronavirus-related business interruption losses depends on the terms, conditions, exclusions and endorsements of each particular policy as well as the specific facts and circumstances involved with each claim. Not every policy is written the same or interpreted the same by courts. In addition, the coronavirus crisis is an evolving situation with “ground” conditions changing, and new laws, regulations, and mandates issued, seemingly every day, some of which may have an effect on insurance coverages. Rather than relying on blanket statements in the media or elsewhere, we strongly encourage clients, whether an insured or insurer, to review insurance policies and claims, and to contact one of the authors or your regular Seigfreid Bingham attorney with any questions or to seek a coverage analysis or opinion.

Types of Policies that May Provide Coverage

The four main types of insurance policies under which claims most likely will be submitted are:

• Commercial Property Insurance – especially if coverage for the following is included as a component part of the policy or as a freestanding policy:

o Business Interruption

o Contingent Business Interruption
o Civil Authority
o Ingress/Egress

• Event Cancellation Insurance
• Worker's Compensation Insurance
• Commercial General Liability Insurance

Coverage could also potentially be available under various other types of insurance policies, including: trade disruption policies, employment liability policies, director and officer liability policies, and various others.

Commercial Property and Business Interruption Insurance

Commercial property insurance typically covers losses for damage to business property. It often includes business interruption coverage as a component part, or a freestanding policy may be issued. The purpose of such coverage is to cover the loss of business income due to a slowdown or temporary suspension of business operations under certain circumstances.

Whether a particular business will be able to make a successful claim for business interruption coverage will depend entirely on the policy language and the circumstances causing the business interruption. Following the SARS epidemic, carriers began to expressly exclude viral or bacterial outbreaks from standard coverage. However, many policies may not contain this exclusion or may limit it to bacteria. Similarly, many policies require that businesses suffer a "direct, physical loss or damage" to recover for business interruption losses. Physical loss or damage to the property may have occurred if employees are diagnosed with the virus, and there is some legal authority for coverage even without physical loss or damage to the property itself, such as where a harmful substance causes loss of use of the property, even temporarily. Under such circumstances (and perhaps others), the insured may be able to recover lost profits, decontamination, clean-up and other losses and expenses related to shut-down. Furthermore, courts may be asked to decide whether the language in such policies provides coverage for business interruption losses occasioned by the coronavirus, and those decisions will turn on not only the specific circumstances of an insured's claim, but also the specific policy language. Thus, the law regarding these issues may evolve, and insureds and insurers will need to keep abreast of such changes.

Contingent business interruption or supply chain insurance expressly covers lost profits and other economic losses that result from loss or damage to the property of a supplier (i.e., a third-party entity upstream in the supply chain) or a customer or client (i.e., a third-party downstream in the supply chain). In addition, some relevant policies may provide coverage where the business interruption is due to other causes, such as orders from a civil authority (i.e., state or locally issued stay-at-home orders) and loss of ingress or egress to the covered property.

Ultimately, a review of potentially relevant insurance policies is worthwhile because not all insurance policies are the same with respect to the coverage they provide. Neither insureds nor insurers should automatically discard the notion that insurance coverage for business interruption losses exists due to coronavirus-related interruptions.

Event Cancellation Insurance

Event cancellation policies typically cover lost revenues and out-of-pocket expenses due to a list of covered causes requiring the event to be cancelled. Coverage for coronavirus-related cancellations may be available if the list includes communicable diseases or pandemics, and may include some type of coverage when official bans on large public gatherings are implemented like the recently-issued "Stay at

Home" orders issued by several state and local governments.

These specialized policies are typically purchased by hotels, convention centers, concert venues and event organizers, all of whom should evaluate whether to make claims under such policies for coronavirus-related cancellations if they have not already. Timely filing of claims and mitigation of damages will be an issue in most situations, especially if the event has not been rescheduled.

Workers' Compensation Insurance

Workers' compensation insurers may soon see claims from workers who say they contracted COVID-19 while on the job. This may especially be the case with carriers providing workers' compensation coverage to emergency responders, hospital workers, emergency medical technicians, or those who work in essential or high-risk businesses.

Whether coverage exists likely will depend on whether the virus exposure was sufficiently entwined and related to their work activities. This will be easier to show for first responders and healthcare workers regularly exposed to the virus, whereas workers in other sectors may find it more difficult to adequately trace and prove where and how they were exposed.

General Liability Insurance

General liability insurance may provide coverage to businesses who face lawsuits over allegedly failing to protect customers from the coronavirus. One such lawsuit has already been filed against Princess Cruise Lines in South Florida by a couple who claimed the cruise company acted with gross negligence by failing to take precautions to prevent a coronavirus outbreak on one of its ships. Similar premises liability lawsuits may be filed against colleges, hospitals, nursing homes, and other businesses. Lawsuits against third-party contractors or suppliers who bring the virus onto the premises of another may be another source of claims. Policy exclusions for claims of property damage or bodily injury stemming from exposure to a "pollutant" or "contaminant" will be important in all such situations.

Timely Filing Claims

If you are an insured, it is important that you do not delay and that you make a timely claim for business interruption losses. As is the case with most insurance policies and related claims, an insured must give prompt notice to its insurer in accordance with policy requirements. If prompt notice is not given, an insured may be barred from recovering for business interruption losses or could recover far less than what might otherwise be possible.

Some insurance policies define the notice standard as "when reasonably practicable," while other policies require that notice be given "promptly" after the loss occurs. Again, the timing by which an insured should give notice of an insurance claim will depend on the circumstances related to the business loss. Insureds should review all commercial insurance policies to become familiar with the language regarding notice requirements, and consult their attorneys for advice, as needed.

The ever-changing business and legal landscape related to the coronavirus requires that insureds and insurers stay on top of coverage and claim issues. It may well be in the insured's or insurer's best interest for notice of a claim to be given to the carrier when the business interruption first occurs (i.e., when a business is ordered to cease some or all activities for a period of time) or as soon as possible thereafter. Both insurer and insured can then monitor the situation/claim as it continues to develop. In the likely event that conditions change or additional losses occur, insureds should consider supplementing claim notices so the insurer is made aware of any change in the circumstances that form the basis of the claim.

Record Keeping is Key

It is crucial that while business interruption losses occur, insureds maintain good records. Insureds should track the various types of costs and losses they incur that stem from coronavirus-related business disruption, suspension, or slowdown, including: cancelled contracts or orders; expenses to reduce or mitigate the business disruption or loss; property preservation or security expenses; employee costs, including paid leave, work from home expenses, etc.; decontamination costs; property damage-related costs; and various others. It is a good strategy to develop separate cost accounting codes for tracking all such losses in real time or as soon as possible thereafter.

Insureds should also thoroughly document the reasons for and extent of the business interruption, including whether the virus was physically on the property, from an employee or elsewhere, such as a third-party contractor. All efforts and related costs associated with mitigating the business interruption should be documented as well. Such information should be included in the claim and may impact which, if any, policy or policies may provide coverage.

Conclusion

Companies that are experiencing financial losses from coronavirus-related business interruptions should identify and review their commercial insurance policies and consult with one of the authors of this article or their regular Seigfreid Bingham attorney regarding whether coverage may be available and whether a claim should be made. Insurance companies deluged by business interruption claims should carefully review policy language and the specific factual circumstances involved and seek coverage opinions, when appropriate.

This article is general in nature and does not constitute legal advice. Readers with legal questions should consult the authors, Brenda Hamilton (bhamilton@sb-kc.com), Christopher Tillery (ctillery@sb-kc.com), or Curry Sexton (csexton@sb-kc.com), or your regular contact at Seigfreid Bingham at 816-421-4460. For the latest updates from Seigfreid Bingham, please visit our **COVID-19 Resources page.**