



CLIENT ALERT

COVID-19 and Business Interruption Insurance

Many businesses have business interruption insurance policies in place to protect their business and income in the event of the occurrence of catastrophes that prevent them from operating. Most commonly, those circumstances have included disasters such as fires, floods, or earthquakes that destroy physical structures. In light of recent government orders that employees not report to work during the COVID-19 outbreak (effectively closing many businesses), business owners are wondering whether their insurance policies will replace lost income during this pandemic.

Business owners should anticipate the reality that claims made under their existing policies will likely be denied under these circumstances for a variety of reasons, explained below. Nevertheless, it is important that businesses review their policies, preferably with experienced professionals, and submit claims in a timely manner to preserve their rights. In this climate of government intervention and extraordinary mandates that change from day to day, business owners should not be quick to dismiss the possibility that coverage may be available.

For example, the New Jersey Legislature is currently considering a bill (New Jersey Bill A-3844) that would materially alter provisions of pre-existing insurance policies to provide coverage for COVID-19-related

losses. While such a measure would undoubtedly be challenged by insurance carriers as being in violation of the Contracts Clause in Article 1 of the U.S. Constitution, whether that particular legislation (if enacted) or any other similar actions by governmental entities are ultimately upheld in the courts, businesses should be focused on placing themselves in the best position for a positive outcome.

In addition to stand alone business interruption policies, business interruption insurance is often tied to a commercial property insurance policy as an endorsement to the insured's property policy. The endorsement is designed to protect the insured for losses of income it sustains as a result of direct loss, damage, or destruction to insured property by a covered occurrence.

A typical clause provides for protection of income lost due to the necessary suspension of operations during the period of restoration. Such a clause often provides that the suspension must be caused by direct physical loss, damage, or destruction to property which results from a covered cause of loss.

Depending on the specific language contained in a policy, insurers are expected to disclaim coverage primarily based upon the argument that most businesses are not being "shut down" as a result of a physical

loss (such as the property being contaminated by COVID-19) and, even if a premises were closed due to contamination, such a property could be “restored” rather quickly with a thorough cleaning.

Additional extensions of coverage are often included in such endorsements, such as:

Service interruption coverage (covering loss caused by direct physical loss, damage, or destruction to electrical, steam, gas, water, sewer, telephone, or any other utility or service including transmission lines and related plants, substations, and equipment of suppliers of such services);

Contingent business interruption coverage (covering loss resulting from damage, or destruction of property owned by others, including direct “suppliers” of goods or services to the insured and/or direct “receivers” of goods or services manufactured or provided by the insured);

Leader property coverage (covering loss resulting from direct physical loss, damage, or destruction of the type insured by the insured’s property policy to property not owned or operated by the insured, located within the stated distance to insured’s property or business, and which attracts business to the insured); and

Interruption by civil or military authority coverage (covering loss sustained by the insured during the length of time when access to such described premises is specifically prohibited by order of civil authority as a direct result of damage covered by the insured’s policy, to covered property on the described premises or property adjacent to the premises described in the insured’s policy).

Typically, the losses triggering such extensions of coverage would need to be of the same type of loss covered by the insured’s own policy.

Additionally, some policies contain broad exclusions of damage, including damage caused by biological agents such as bacteria and viruses, some of which were first included in policies after the 2003 outbreak of Severe Acute Respiratory Syndrome (SARS). On the other hand, some property policies either expressly provide coverage for damage caused by disease or do not completely exclude such damage.

What is most important at this time is for businesses to promptly review policies, notify insurers of claims, and track losses. The question of whether an insurer will deny coverage is of secondary importance, particularly where government intervention in one form or another remains possible.

We will continue to monitor developments surrounding the COVID-19 outbreak and provide updated information as it becomes available. Additional information for business affected by the COVID-19 outbreak can be found at <http://www.raimondi-law.com/covid19>

The attorneys of Raimondi Law, P.C. have nearly 40 years of combined experience in advising and litigating on behalf of business with respect to business law matters, including insurance coverage disputes in particular.

This information update is provided as a service to our clients, colleagues, and acquaintances. It is designed to give general information on the particular matters presented. It is not intended to be a comprehensive summary of recent developments in the law, be an exhaustive treatment of the subjects covered, provide legal advice, or render a legal opinion.

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