

COVID-19 pandemic should cause businesses to review their business-interruption insurance coverage



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The novel coronavirus (COVID-19) is spreading across the globe, impacting work force availability, manufacturing and supply chains in a variety of industries. As the economic impact of the pandemic deepens, businesses would be wise to consider all manner of risk mitigation tools available. One step is for businesses to consult with their insurance brokers and review their insurance policies to determine whether they have available business-interruption insurance in place to help potentially mitigate losses stemming from the pandemic.

What Is Business-Interruption Insurance?

Business-interruption insurance is insurance coverage that replaces business income lost in a disaster. It is intended to return to the insured's business the amount of profit it would have earned had there been no interruption to the business. Such insurance is generally added to a property/casualty policy or as an add-on rider to a comprehensive package policy. This insurance is typically not available as a stand-alone policy.

Most property/casualty insurance policies usually include two types of coverage relating to business disruptions:

1. Standard business-interruption coverage, which insures against losses resulting from direct physical loss of or damage to the insured's property.

2. Contingent business-interruption coverage, which provides protection against an insured's revenue-related losses that are the result of things like a third-party supplier or distributor shutdown when the interruption directly impacts the insured's ability to produce its products or provide its services.

Standard Business-Interruption Coverage

A common example of standard business-interruption coverage is where some type of event damages a business, resulting in destroyed equipment or inventory and forcing major repairs. While the insured's property insurance pays to replace the inventory and repair the building, the business-interruption insurance is there to compensate the insured for the revenue it loses in the period that business is not fully operating during the repairs.

Contingent Business-Interruption Coverage

Contingent business-interruption insurance provides the insured financial assistance when the loss of a primary supplier or customer affects the insured's ability to do business. In most instances this would apply where an insured business relies on a single supplier or manufacturer to provide the insured specific materials, a few major customers to which the insured gives most of its business, or geographically close businesses to attract customers to the insured's business.

Given the significant degree of societal impact projected to be caused by the spread of COVID-19, it is conceivable that these scenarios could play out in real life. One example may be where the supply chain of a particular product is disrupted due to COVID-19 forcing a supplier of that critical component part to cease operations for an extended period of time. A delay in shipments or lack of delivery of those parts to the corresponding manufacturer who incorporates those parts would impede such manufacturer's ability to complete the product and supply its own customers. These resulting losses for the manufacturing company may be covered by that company's business-interruption insurance (depending on the language of the policy).

Another scenario may occur where a company's key customer can no longer purchase goods or services due to lack of financial means because a COVID-19 outbreak at that customer forced a shut down for some material amount of time. A final example might be where COVID-19 decimates travel to a tourist-centric destination forcing tourists to go elsewhere. Because a business relies on significant numbers of people to visit that geographic area, the business would have no alternative but to shut down for a period and only reopen once the customer base returns to the area. In that instance, contingent business-interruption coverage might be available to places like hotels, restaurants or entertainment venues that rely solely on customer flow to that destination to help mitigate its losses.

Are COVID-19 Losses Covered?

The applicability of business-interruption coverage to the COVID-19 outbreak will be considered on a case-by-case basis and will depend largely upon the language within a particular policy, including possible exclusions. It will also matter whether the insurer takes the position that COVID-19 actually does not cause physical loss or damage to an insured's property. While the virus itself does not actually cause physical damage (e.g., like a fire, wind or water might), it could cause losses because such property becomes uninhabitable. There are instances in the case law where bacteria or asbestos contamination were deemed to have caused physical loss, even though there was no physical damage to the property itself. Moreover, if COVID-19 causes a business to be uninhabitable or otherwise unfit for intended use, that may be considered to constitute "property damage" under the policy and, therefore, triggering recovery for

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related business losses.

Finally, many commercial property policies also provide coverage for business losses resulting from a “civil authority” prohibiting or impairing access to the policyholder’s premises. This coverage often does not require that such “physical loss” occur to the policyholder’s property. Therefore, if the federal, state or local government limits access to or from areas where active COVID-19 is active, such “civil authority” insurance may cover the direct losses of the insured’s business if the insured is located in the designated area, or the insured’s indirect losses if the civil authority interrupts the business of the insured’s supplier or customer in a designated area.

While none of these options portend a guaranteed recovery, in the face of a global recession, businesses would be prudent to evaluate all of their options. If you would like to discuss these issues or any other risk-mitigation options due to business concerns stemming from COVID-19 or related economic conditions, please contact one of the McDonald Hopkins attorneys listed below.



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