

COVID-19 Business Interruption Insurance

General Information and an Update.

Many business owners are currently experiencing losses in sales and closures which may lead to questions regarding business interruption coverage within property policies.



GENERAL APPLICATIONS FOR BUSINESS INTERRUPTION COVERAGE:

Business Interruption ('BI') insurance is a form of coverage predominantly purchased by manufacturers and retail businesses. Its purpose is to pay extra expenses and lost profits associated with the loss of use of the insured's premises if that loss is caused by a covered claim.

For example, if a manufacturing facility burned down, the Insurer not only will pay for the rebuild, but for the restoration of the company's lost profit. To procure the coverage, the customer quantifies the amount of continued overheads costs the business would incur and the profits the facility generates, and the underwriter determines the appropriate premium.

BUSINESS INTERRUPTION FOR CONTRACTORS:

Lost profits coverage, the principle form of BI insurance, is not offered to contractors, mostly because the loss of use of their office (or 'shop'), due to a fire or other insured peril, would not cause their revenues to cease, as it would a manufacturer – the contractor can manage their business from temporary facilities, without significant impairment.

Contractors sometimes purchase another form of BI, called 'Extra Expense' insurance. If their office were damaged to the point it could not be used, the insurance would pay the extra expenses incurred by the contractor to secure alternate premises and otherwise maintain normal operations.

BUSINESS INTERRUPTION COVERAGE ON JOBSITES:

Coverage can also be added to Builders Risk policies for 'Extra Expenses' and 'Expediting Expenses', which work generally as their titles suggest. If the project were damaged by a covered peril, the policy would pay expenses reasonably incurred by the contractor to continue with work on site, and to catch up to the schedule.

'Delayed Opening' coverage can also be purchased as an 'endorsement add-on' to the Builders Risk policy, which would pay the lost rents or operational profits the Owner may incur as a result of a delay caused by a covered claim. While not a requirement of CCDC contracts, occasionally private owners with revenue generating businesses waiting to occupy the completed project will require and purchase this coverage.

IS BUSINESS INTERRUPTION COVERED IF THE PROPERTY IS NOT PHYSICALLY DAMAGED?

In mid March, we published a Risk Insight memo that noted that BI coverage extensions in property insurance policies required physical damage to the insured's place of business and by an insured peril (such as fire or water damage) to trigger a claim. On that basis, we expected that insurers would not view a business interruption related to a Covid-19 induced business shutdown as a coverable loss - not unless the physical property were injured directly (e.g.- if the subject property was closed specifically because it was contaminated by the virus).

WE NOW HAVE AN IMPORTANT UPDATE TO SHARE ON THE SUBJECT:

Later in March, subsequent to that write up, the Ontario Superior Court of Justice released its decision on a legal case, finding that 'loss of use', could itself be interpreted to fit the definition of physical damage, and therefore may be sufficient to trigger coverage under the insured's property policy. In light of this new ruling, *coverage for a loss resulting from a virus (COVID-19), cannot be summarily ruled out.*

The case (MDS vs Factory Mutual) had nothing to do with infectious disease, so it is hardly a direct precedent parallel. The decision was based on a set of very unique facts, and a particular policy wording, and so this does not mean that Insurers are going to cover COVID-19 BI claims that did not result from some physical damage at the insured premises. In addition, there are other coverage exclusions in most policies that were not a factor in the MDS case but which may be in a COVID-19 claim.

The Insurance Industry feels that Covid-19 and other pandemics is not unlike Nuclear War - something with global impact, unquantifiable financial consequences, and of such a massive scale so as to be un-insurable. As a result, this lower court ruling will certainly be appealed - its impact on the insurance market would be colossal, possibly even terminal for many.

WHAT'S NEXT? WHAT'S LIKELY?

COVID-19 is an evolving industry-wide issue, resulting from an unprecedented event. We cannot predict the outcome of the likely appeal, or whether COVID-19 BI claims will be considered, since analysis must be based on the wording within an insured's specific policy, and the Industry's position as a whole.

That said, we believe that Insurers will decline BI claims that emanate from Covid-19 business shut downs or slow downs, relying on policy language and what they believe the intent of the coverage is, which to provide coverage for the impact of business interruption following a physical damage covered claim. Many Insurers already expressly stated so in public forums.

That said, if you have experienced any COVID-19 related loss with respect to the mandatory shutdown directives, and feel you may have a claim, please contact your insurance advisor to discuss. We're willing and able to make such submissions.

One final note: There is no requirement for a business to produce a denied claim prior to accessing any government programs or benefits related to COVID-19 , and there is no requirement to 'file' a claim immediately now or lose your privileges. That said, we encourage our clients to keep good business records should you wish to pursue a claim of any sort (COVID-19 related or otherwise) in the future.



For more information and strategies to help protect your assets and mitigate loss, contact your Petrela Winter Advisor today.

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