



COVID-19 BUSINESS INTERRUPTION CLAIMS: WHAT TO EXPECT

Across the insurance industry we expect to see initial carrier denials based on the requirement for direct physical loss to property. However, it is still unclear how this requirement will ultimately play out in the face of COVID-19 claims. Once you have submitted the claim to your insurance carrier, you may see communication coming from your insurer, and we wanted to help clarify the terms that are used in the communication.

MY INSURER IS RESERVING THEIR RIGHTS TO DENY MY CLAIM, WHAT DOES THAT MEAN?

This is an insurer's notification to an insured that coverage for a claim may not apply. Such notification allows an insurer to investigate a claim to determine whether coverage applies (in whole or in part) without waiving its right to later deny coverage based on information revealed by the investigation. Most Reservation of Rights letters involving the COVID-19 exposure will reserve that the claim does not qualify as Direct Physical Damage.

DIRECT PHYSICAL LOSS OR DAMAGE

The coverage provision in most property insurance policies provides that the policy covers "direct physical loss or damage" to covered property caused by a covered cause of loss during the policy period. Direct physical loss is therefore an important threshold requirement for coverage under most property insurance policies. The requirement that the loss be 'physical,' given the ordinary definition of that term, is widely held to exclude alleged losses that are intangible or incorporeal. We are unsure how COVID-19 will be viewed by insurers at this time.

ACTUAL LOSS SUSTAINED

Business income coverage covers the actual loss sustained by the insured as a result of direct physical loss or damage to the insured's property by a peril not otherwise excluded from the policy. The insurer is only obligated to pay if the insured actually sustained an interruption of business leading to a business income loss. If the insured does sustain a business income loss, the extent of the insurer's obligation is limited to the dollar amount of loss actually sustained, but not to exceed the applicable policy limit.

BUSINESS INCOME

Usually, the carrier is liable for the reduction in net income that results from suspension of operations—whether wholly or partially—due to a physical loss at the insured's premises. The following commonly used definition of business income is intended to clarify what sums can be included when calculating the amount of loss. "Business income includes the net income (net profit or loss before income taxes) that would have been earned or incurred by the insured and the continuing normal operating expenses incurred, including payroll."

PROFITS

Based on prior months' performance, a policy will provide reimbursement for profits that would have been earned had the event not occurred.

FIXED COSTS

These can include operating expenses and other incurred costs of doing business.

EMPLOYEE WAGES

Coverage of wages is essential if a business does not want to lose employees while shutting down. This coverage can help a business owner make payroll when they cannot operate.

TAXES

Businesses are still required to pay taxes, even when disaster hits. Tax coverage will ensure a business can pay taxes on time and avoid penalties.

LOAN PAYMENTS

Loan payments are often due monthly. Business Interruption coverage can help a business make those payments even when they are not generating income.

PERIOD OF RESTORATION

Insurers are liable for the loss of business income only during the period of restoration, which is often defined as the length of time required to rebuild, repair, or replace the damaged or destroyed property. The period of restoration begins when the physical loss or damage occurs; it ends when the property should, with reasonable speed, be repaired or replaced. Expiration of the policy does not end the period of restoration. As long as the physical loss occurs during the policy period, the business income coverage will provide coverage for the duration of the period of restoration, even if the policy expires before the period of restoration ends.

A photograph of two men in business attire, one older with a white beard and one younger with a dark beard, looking at a laptop screen. The image is partially obscured by text boxes on the left side.

EXTRA EXPENSES

Business interruption insurance will provide reimbursement for reasonable expenses (beyond the fixed costs) that allow the business to continue operating while the business recovers.

TEMPORARY LOCATION

Some policies cover the costs involved with moving to and operating from a temporary business location.

COMMISSION AND TRAINING COST

In the wake of a business interruption event, a company will often need to replace machinery and retrain personnel on how to use the new machinery. Business interruption insurance may cover these costs.

CONTINGENT BUSINESS INTERRUPTION (CBI) COVERAGE

This coverage is designed to cover an insured's business income loss resulting from loss, damage, or destruction of property owned by others, including the following: direct "suppliers" of goods or services to the insured and/or direct "receivers" of goods or services manufactured or provided by the insured. The property damage to these suppliers or receivers must be of a type that would be covered by the insured's policy had the damage happened to the insured's property.

CIVIL AUTHORITY INGRESS/EGRESS

A business interruption event may result in government-mandated closure of business premises that directly cause financial loss. Examples include forced closures because of government-issued curfews or street closures related to a covered event.

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