



March 5, 2020

Would Business Interruption Insurance Cover Losses Stemming from a Coronavirus Pandemic?

Most businesses purchase some level of “business interruption” coverage as part of their commercial property insurance policies. But to what extent would this coverage apply in the event that a business suffers losses as a result of a potential or actual coronavirus pandemic?

Business Interruption Insurance Under Most Property Policies

Property insurance policies, by definition, are intended to cover casualties to the policyholder’s real and personal property. A coronavirus pandemic (or even the threat of such a pandemic) would undoubtedly cause many businesses to suffer business interruptions and lost profits. An outbreak would likely result in forced quarantines, delays in deliveries, labor shortages, and declines in demand for goods and services. Property insurance policies, however, arguably only provide coverage in a narrower set of circumstances.

Indeed, before most property policies are triggered, two conditions must be met. First, the loss must result from a covered cause of loss that is not excluded by the policy. Second, there must be a “direct physical loss of or damage to” insured property.

In most instances, the “direct physical loss” requirement will be particularly important in determining whether losses resulting from a potential or actual coronavirus outbreak will be covered under a property insurance policy. This is a fact-specific inquiry, and courts have not adopted uniform rules for determining when a physical loss has occurred. That said, at least two types of losses would arguably trigger coverage under most policies:

- Losses resulting from the contamination of covered property, such as might be the case if an insured premises becomes uninhabitable after one or more employees who worked in the space contracted coronavirus; and
- To the extent they are not otherwise excluded, losses resulting from a “civil authority” prohibiting or impairing access to the policyholder’s premises. This could be the case if a federal, state or local government imposed a mandatory quarantine or exclusion order that limited access to a policyholder’s office or other facilities.

By contrast, instances in which a business loses money merely because of a loss of workers, a voluntary quarantine or

a decline in the demand for its product would likely not rise to the level of a “direct physical loss” under most policies. Finally, some property policies—particularly in the hospitality industry—will contain specific endorsements for losses resulting from “communicable or infection diseases.” These endorsements often do not require a direct physical loss. In evaluating the potential availability of insurance coverage, policyholders should evaluate whether their policy contains this type of endorsement.

Business interruption coverage may provide coverage for coronavirus-related losses in specific circumstances—particularly if there is a direct physical loss or if a governmental authority bars access to the policyholder’s premises. The availability of coverage, however, will depend on the specific facts of the loss and the specific language of the applicable insurance policies. We suggest contacting an attorney to advise you concerning the facts and policy language unique to your particular situation.

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