
Business Interruption Coverage for COVID-19 Losses

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Business interruption insurance coverage may be available to businesses forced to shut down by the government as a result of the COVID-19 pandemic. But the availability and scope of the coverage will depend on the language of the particular policy and the particular facts of each case.

Commercial property insurance policies typically provide business interruption coverage for loss of business income that the policyholder sustains due to the necessary suspension of its operations caused by an external event; e.g., a fire or flood. Such policies also typically provide “Civil Authority” coverage for loss of business income “caused by action of civil authority that prohibits access to the described premises.”

Often, but not always, these coverages are tied to a “direct physical loss” requirement, which is not defined in the standard policy. When confronted with COVID-19 business interruption claims, the insurance industry will no doubt assert the “direct physical loss” requirement as an impediment to coverage, taking the position that unless the insured’s business or property is physically damaged, there is no coverage for business interruption losses.

However, that issue will depend on the wording of the particular policy and how the particular “direct physical loss” language is construed by a court. For example, the standard Insurance Services Office (ISO) Businessowners Special Property Coverage Form, found in many business insurance policies, uses the phrase “direct physical loss *of or damage to property* at the described premises.” (Emphasis added.) The use of the phrase “physical loss of” in the disjunctive before the word “or” supports a construction of the policy that a loss of *use* of the property is sufficient to trigger coverage even if the property is not physically damaged. There is also case law that supports this broad construction of the insuring agreement of the policy. See *Total Intermodal Services, Inc. v. Travelers Prop. & Cas. Co. of Am.*, 2018 WL 3829767 (C.D. Cal. 2018).

Specialized policies sold to businesses in the hospitality, travel and healthcare industries may also provide broader coverage depending on the particular language of the policy.

While there are other limitations on potential coverage for business interruption losses stemming from COVID-19, business owners would be well advised to be proactive and ask coverage counsel to review applicable policies for potential coverage for any losses they may suffer.

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