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Business Interruption Insurance Coverage and the Coronavirus

As instances of documented COVID-19 (“Coronavirus”) cases rise across the country, many businesses are unable to continue operations, as their workforce stays home in light of the recommended practices of social distancing. Other businesses are forced to close by governmental mandates aimed at limiting the spread of the virus. As entire industries are interrupted by the proliferation of Coronavirus, many business owners are left asking the question: does my insurance coverage protect me?

Most business owners purchase a Business Owners Policy, which generally includes business property coverage, general liability coverage, and business interruption coverage. In practice, business interruption policies cover events that are insured by commercial property coverage, such as fires and some weather related damages. These policies cover items such as lost revenue, rent or lease payments, relocation costs, employee wages, taxes and loan payments. Business interruption policies do not tend to cover actual property damage (covered by business property insurance), extra expenses, or contingent business expenses.

Whether a business interruption policy applies to the current Coronavirus pandemic will largely depend on the specific language included in the policy. Typically, a business interruption policy provision will include the following language:

“We will pay for the actual loss of business income you sustain due to the necessary suspension of your operations during the period of restoration. The suspension must be caused by the direct physical loss, damage, or destruction to property. The loss of damage must be caused by or result from a covered cause of loss.”

Some policies may include coverage for contingent business interruption. This coverage applies when a company’s supplier unexpectedly ceases operations, causing interruption of your business. The key phrases in both a standard business interruption policy and a contingent business interruption policy are “direct physical loss” and “covered cause of loss”.

“Direct physical loss” has been held to exclude economic losses unaccompanied by a distinct and demonstrable loss of the physical use of the business property. There is some legal authority that could potentially include the Coronavirus as a “direct physical loss”. In *Gregory Packing, Inc. v. Travelers Property Casualty Company of America*, a 2014 Federal Court in New Jersey found that covered property damage had occurred when ammonia was accidentally released in a business’ facility, rendering the building unsafe until it could be aired out and cleaned. The Court held that property can sustain physical damage without experiencing structural alteration. Courts in Oregon and New Hampshire have come to similar conclusions. These rulings present the argument that actual property damage and therefore “direct physical loss” may have occurred where it can be documented that Coronavirus was actually present on the business’ premises.

Unfortunately for many business owners, after the outbreak of SARS in the early 2000s, most insurance carriers began to specifically exclude viral or bacterial outbreaks from coverage. As a result, most U.S.

business interruption policies were not written on the assumption that businesses would be closed due to the spread of a disease such as Coronavirus. As such, under most policies, Coronavirus is unlikely to be considered as a “covered cause of loss”, even if there is an argument for “direct physical loss”.

Local and state governments have begun to issue mandates aimed at limiting the spread of Coronavirus, including forcing the closure of many businesses. As a result, those business owners are left to wonder whether the issuance of a Civil Order mandating their closure will affect the interpretation of their business interruption policy in favor of coverage. The answer will likely still depend on the language contained in each specific policy. Some policies include coverage for “acts of civil authority”.

Acts of civil authority provisions provide coverage when a business has its operations interrupted by a Civil Order issued by local or state government. An example of this occurred in Baltimore in 2015, when civil unrest led to rioting. The City of Baltimore instituted a city-wide curfew, directly impacting local businesses such as restaurants and bars. In this scenario, business property insurance would provide coverage for damages occurring from acts of vandalism, while acts of civil authority insurance would provide coverage for the loss of income related to the institution of the curfew. To be effective, the Civil Order must prohibit access to the business’ premises, and result from either a covered loss or from damage caused by a covered peril occurring at a location other than the businesses’ premises. Once again, the coverage determination is found in what is considered to be a “covered cause of loss”. If the policy excludes coverage for viral or bacterial outbreaks, coverage for acts of civil authority may not provide coverage related to business interruptions stemming from Civil Orders issued to help limit the spread of Coronavirus.

Whether a business’ losses and damages will be covered under a business interruption policy will likely depend entirely on the language included in the policy. One thing to consider is whether the business interruption policy is a basic part of the policy, or whether it is added to the policy via endorsement, as endorsements tend to provide a broader range of coverage than the base policy due to the additional premiums paid for the endorsement.

Before making decisions, business owners are encouraged to thoroughly read their insurance policies, and to talk to their agents and lawyers, in order to determine whether their insurance policies will cover losses and damages resulting from any interruption that the Coronavirus may cause in their business operations.



Tommy Wright is a shareholding member of Anderson, Crawley & Burke, PLLC, providing legal services to clients throughout Mississippi, Northern Louisiana, and Western Tennessee.

You may contact him at 601.707.8759 or TWright@ACBLaw.com