**Business Interruption Insurance**

Much discussion has occurred recently concerning business interruption insurance related to the coronavirus. Business interruption insurance (aka business income insurance) is a type of insurance that replaces the loss of income that a business suffers after a disaster such as a fire, hurricane or tornado to name a few. It is sold as a rider or add-on to a property/casualty (P&C) policy. Rarely do businesses go out of business at the loss of a building or property damage. Yet when a business loses its ability to generate income and can’t make payroll and pay bills, that’s when companies go out of business. Business interruption protects against that type of loss.

With the exception of extremely large commercial policyholders who may have manuscript (individually tailored) policies that might include an endorsement for pandemic or virus type risk, the business losses due to the current COVID-19 pandemic most likely would be excluded from coverage. According to the insuring agreement in an insurance contract for business interruption, physical damage to the property must occur before the business can actually be paid for a loss of income. It may be difficult to prove that the coronavirus is causing damage to the physical property of the business to trigger the business loss income. However, even though it may be difficult to prove according to most contracts, the P&C industry anticipates considerable litigation over the business interruption coverage due to the coronavirus outbreak.

In addition, Louisiana, New Jersey, New York and Pennsylvania have seen legislation introduced to construe business interruption to include coverage due to a loss brought about by the current pandemic. It should be noted that while these bills have been introduced, it’s uncertain as to the likelihood of enactment in those states. In Texas, trial lawyers have joined with local chambers through the Texas Chamber of Commerce Executives to create a “Coalition to Help Small Business” by initially gathering data from chamber business members related to the effects of the coronavirus. The ultimate intent is to either create a FEMA/grant style opportunity for businesses with losses or to seek a waiver of the exclusions.

Many of the solutions being proposed regarding business interruption losses for smaller companies may be well-intentioned but may generate ill-fated consequences. Moreover, some of the solutions pit one business against another. Securing waivers for exclusions to the existing business interruption contracts and enacting legislation that intervene in those contracts is problematic. P&C carriers assess premiums based upon covered risks. Retroactive intervening in those contracts forces carriers to pay claims that were never actually planned for or underwritten. Requiring inclusion of pandemic coverage in future policies will be expensive to insure and, in some cases, could force carriers to stop offering much needed business interruption coverage altogether.

Currently, the Indiana Chamber has no written policy regarding business interruption. In such a case, the Chamber gleans guidance from its already written policy positions to determine what is generally best for all Chamber members. Thus, the Indiana Chamber believes that the business interruption policy contract should dictate the terms of coverage and the availability of an insured business to recover losses.

The Chamber would oppose any attempts either by government fiat, regulation or legislation to intervene in those contracts. The best approach moving forward would be to create a backstop similar to that which was created after 9/11 related to terrorist attacks called TRIA (Terrorism Risk Insurance Act). A similar system makes sense in addressing issues related to unforeseen pandemics and the resulting problems that occur. The Indiana Chamber plans to present this position in future federal lobbying efforts and encourages local chambers with a federal presence to do the same.

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