

## BUSINESS INTERRUPTION COVERAGE AND THE CORONAVIRUS

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In a matter of weeks, Governmental action, in Ohio, and a growing number of states, due to the Coronavirus pandemic, has already resulted in governmentally mandated closures of bars, restaurants, schools, hair salons, barber shops, tattoo parlors, spas, gyms and movie theaters, etc. The list is lengthy and grows by the day. Ohio's Governor, Mike DeWine, has been particularly aggressive, in ordering the closure of businesses, more so than many other states. Such closures will undoubtedly cause business owners to request coverage, for lost income, under their insurance policy's Business Interruption Coverage.



**Coronavirus  
Resource Center**  
Business Interruption  
Coverage

Business Interruption Coverage protects insured business owners from losses of business income and earnings - that are typically caused by physical damage arising from a "Covered Cause of Loss." Such coverage is usually triggered by the total or partial suspension of business operations due to the loss or loss of use of the business' building, plant, machinery or equipment as the result of a Covered Cause of Loss. Additionally, Business Interruption Insurance also frequently extends to supply chain disruptions. For example, if a supplier makes a critical part for a manufacturer, and that supplier's businesses shuttered, and new parts cannot be delivered for a while, such a loss of ability to continue to function, until new parts arrive, could potentially be covered under Business Interruption Insurance.

In order to prove a covered Business Interruption claim, under most policies, insureds will have to prove that a "Covered Cause of Loss" caused direct physical loss of damage to the property, at the described premises, resulting in a suspension or interruption of business operations and the resulting loss of business income. One issue, as it respects the Coronavirus, will be whether the presence of its bacteria or microbes in a building surface or company, which does not cause any type of structural damage, will constitute physical damage, arising from a Covered Cause of Loss, under the Business Interruption Coverage.

Insureds will likely argue that the presence of bacteria or microbes in their business space, caused by the Coronavirus, fits within the parameters of direct physical loss or damage to property. In that battle, those insurers that have the 2006 ISO endorsement entitled "Exclusion of Loss Due To Virus or Bacteria" will be in a strengthened position. That "Virus Exclusion" endorsement precludes loss or damage caused by or resulting from "any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease." Insurers, whose policies lack that exclusion, will be missing a solid coverage defense arising from that exclusionary specific endorsement.

Many property policies, providing Business Interruption Coverage, also contain "Civil Authority Coverage" that provide benefits when Governmental Action impairs or prohibits access to insured's business property. For example, if a nearby building burns down, or has a chemical spill, and the government shuts down other nearby businesses, Civil Authority Coverage may apply to compensate an insured for lost income during such business interruption.

However, again, such Civil Authority coverage is usually limited to claims arising from "direct physical loss or damage to property at locations, other than described premises, caused by or resulting from a Covered Cause of Loss." Nonetheless, insureds will likely argue that their loss of business income, due to mandated closures by the Federal, State or local governments, should be covered under their Business Interruption Coverage. As usual, the outcome will likely depend on the specific policy language involved.

Insureds' counsel will also argue that if persons infected with the Coronavirus, have been inside a property, and physically contaminate it, that could be sufficient to meet the direct physical loss requirement.

Earlier this week, a restaurant, in Louisiana, filed a declaratory judgment action against its insurer, seeking a declaration of coverage for Coronavirus losses under its Business Interruption Coverage.

*See, i.e., Cajun Conti, LLC, et al. v. Certain Underwriters at Lloyds of London, et al.* in the Civil District Court for the Parish of Orleans, Louisiana.

Additionally, if the crises worsens, and it seems to do so on a daily basis, governmental action could put pressure on insurers or force them to pay such claims - and the federal government could choose to stand behind insurers, and bail them out for paying such claims. Some believe that would be a more efficient way to bail out insured businesses, in this crises, than the government trying to handle such claims.

Furthermore, this week, the State of New Jersey's legislature was to examine a draft New Jersey bill, A-3844, which would force business interruption insurers to provide coverage for the Coronavirus crises - despite the "Virus Exclusion" discussed above. That exclusion has been around since 2006. Such a bill, if passed in New Jersey, would essentially invalidate the "Virus" exclusion, although insurers could certainly challenge the constitutionality of such a law, which would be applied retroactively and impair private contracts. Specifically, the draft bill being, being debated, states, in part:

"Notwithstanding the provisions of any other law, rule or regulations to the

contrary, every policy of insurance insuring against loss or damage to property, which includes loss of use in occupancy and business interruption in force in this State, on the effective date of this act, shall be construed to include, among the covered perils under that policy, coverage for business interruption due to global virus transmission or pandemic \* \* \*concerning the Coronavirus disease 2019 pandemic."

As the Coronavirus pandemic continues to evolve and mutate, on a daily basis, and is increasingly destroying what was, by many metrics, one of the greatest economies in American history, and converting it into one that many fear will fall into a deep recession or depression, in a few month's time, business interruption claims will likely continue to grow. Insurers will be called upon to defend or pay such claims and they should begin girding themselves to do so. Fueled by aggressive policy holder's counsel, and sympathetic courts, insurers may be called upon or ordered to pay some claims, that they never envisioned paying, under the Business Interruption Coverages.

When such claims arise, the Weston Hurd attorneys will be available for consultation and advice on what may turn out to be a flood of claims.



**Business Interruption Coverage and the Coronavirus** was written by Weston Hurd partner, [John Farnan](#). John practices primarily in the areas of insurance coverage, defense of directors' and officers' liability claims, personal injury, premises liability, professional liability, commercial litigation and appellate matters. He can be reached at 216.687.3288 (direct) or [JFarnan@westonhurd.com](mailto:JFarnan@westonhurd.com).

#### About Weston Hurd LLP

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