

## BUSINESS INTERRUPTION INSURANCE COVERAGE

COVID-19 has already led to business interruptions and supply chain issues. As such, it is important for companies to understand how COVID-19 can impact their insurance policies, review their existing coverage, and determine what precautions they need to take to control their losses.

### IS YOUR PROPERTY/BUSINESS INTERRUPTION COVERED?

Most commercial property policies include some form of coverage for both business interruption and contingent business interruption. Business interruption coverage protects an insured against disruptions to its own operations. Similarly, contingent business interruption coverage can apply to losses associated with other events, such as disruptions to the business's customers or suppliers.

Under most policy forms, business interruption coverage is implicated when "direct physical loss of or damage to" the insured's property has occurred due to a covered cause of loss (or, in the case of contingent business interruption coverage, the property of the insured's customer or supplier has sustained a "physical loss"). The issue of whether a covered "physical loss" has occurred will depend on the particular circumstances and policy language involved. It also should be noted that some policy forms may specifically exclude losses resulting from bacteria and/or viruses. These types of exclusion became more prevalent after the SARs outbreak in 2003 and subsequent outbreaks of Ebola and Zika.

Further, most property policies offer an important coverage enhancement for loss caused when a "civil authority" prohibits or restricts access to the insured's premises. This "civil authority" coverage may or may not require that the restricted access result from a "physical loss" to the insured's property. Businesses affected by this type of restricted/prohibited access should consult their policies' specific language and consider the potential for coverage.



Some policies are endorsed to specifically provide coverage for losses

resulting from "communicable or infectious diseases" without requiring a "physical loss." This coverage extension is most commonly found in policies issued to insureds in the hospitality and health care arena, but it may

also appear in the policies of insureds in other industries.

Another form of insurance that may provide coverage for COVID-19 related losses is Trade Disruption Insurance (TDI). TDI focuses on the consequential loss potential as a result of loss of earnings, extra expenses, and contractual penalties incurred because of delays or disruptions in trade flows. TDI differs from the standard business interruption coverage afforded by marine cargo or property forms by not requiring that there be a direct physical loss to goods or their conveyances. Such policies could provide some level of protection to companies with complex global supply chain interdependencies.

Business interruption claims determinations turn on the unique facts of each claim, the specific language in the applicable policies, and the law under which those policies are interpreted. As such, each claim must be evaluated on a case-by-case basis.

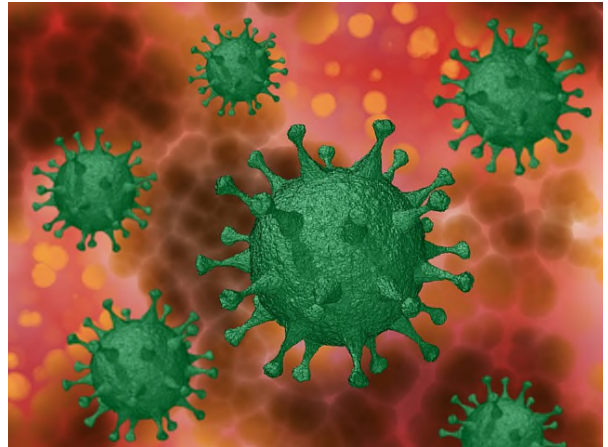
## ACTIONS YOU CAN TAKE NOW

If the COVID-19 outbreak has impacted your business, we recommend proactively engaging with your broker and insurance carrier to discuss anticipated loss exposures and potentially relevant coverages. We also recommend keeping a detailed log of visitors at owned locations, which could become useful if COVID-19 is identified on the premises, and recording proof of government mandated closures at owned locations or locations of customers or suppliers.

In the event there is a potential recoverable claim, it is important to maintain detailed records of COVID-19 related expenditures and losses. We recommend documenting all unusual expenses, including but not limited to cleaning and disinfecting the premises, overtime pay to make up for production losses, and media or communications campaigns to inform the public or employees.

We recommend recording all potential losses associated with COVID-19 and its business impacts, such as cancelled orders, supply chain breakage, and lost profits. Even if these may not ultimately be covered under current insurance programs, they can inform future risk mitigation and management strategies.

In all cases, businesses should detail and retain documentation for all business activities, the precise direct or indirect causes of any disruptions, and mitigation efforts. Businesses must also be prepared to value and substantiate losses by reference to business history, benchmarks, and forecasts.



Disclaimer & Privacy

*This newsletter is for general information purposes only. Information posted is not intended to be legal advice.*