

## Battle Over Business Interruption Coverage Already Underway

By **Fredrick Levin, Michael Rome, Ali Abugheida and Eric Chiang** (May 5, 2020)

Businesses across the country are reviewing their insurance policies to assess whether they have valid claims against losses suffered as a result of the COVID-19 pandemic and related government shutdown directives. Two types of insurance coverage are particularly relevant: business interruption coverage and civil authority coverage.

These are the types of coverage most likely to be part of a business's existing insurance policies, and disputes have already arisen as businesses seek to recover losses related to COVID-19 from their insurance companies. These early cases preview some of the arguments likely to be raised as thousands of businesses begin filing claims.

### **Insurance Policies May Cover Business Losses Resulting From COVID-19**

#### ***Business Interruption Coverage***

Business interruption coverage typically indemnifies the insured against lost income and other expenses resulting from the inability of a business to continue its normal operations and functions. It is often part of a comprehensive commercial property insurance policy, but may also be offered as a stand-alone product.

In ordinary times, coverage is often triggered when a business's premises are physically damaged to an extent that it is temporarily unusable. During this period, a business cannot generate income, even as it continues to incur unavoidable operating costs like rent, payroll, utility bills and taxes. If the cause of the damage that forced the interruption is covered by the policy, a business can recover its resulting losses.

Businesses should review the language of their policies closely to determine whether the precise types of losses they are experiencing are potentially covered by their policies or specifically carved out by exclusions.

For example, some property insurance policies exclude losses caused by viruses. But the existence of such an exclusion is not the end of the story. A business may still be able to get coverage — depending on the policy language — if a particular loss was actually caused by an event that occurred after the spread of the virus, rather than the virus itself.

#### ***Civil Authority Coverage***

A business's insurance policy may also include a civil authority coverage provision that is triggered when a business is forced to close, or loses access to its property, as a result of an order from a civil authority. This coverage can be implicated for local disasters (e.g., hurricanes) in which a business's property itself may not be damaged, but city, county or state officials evacuate and temporarily close access to the entire affected area. Civil authority coverage allows a business to recover losses from a forced closure



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under these circumstances.

The open question for businesses, insurers and, potentially, the courts is whether these policies will provide coverage for losses associated with the shutdown orders that state and local governments across the country have declared. The answer depends on the precise language of the policy and the details of the shutdown.

### **Businesses Rush to Court Seeking Declarations of Coverage**

Businesses affected by the COVID-19 crisis have already turned to the court system in anticipation that coverage for related losses may be denied.

### ***Cases Filed Against Travelers Based on Business Interruption and Civil Authority Coverage***

Various businesses, including restaurants, a law office, and other retail and service establishments, have already filed five cases in Los Angeles Superior Court against the Travelers Indemnity Company of Connecticut.[1] The businesses all allege that their policies include business interruption coverage (under an all-risk policy with no exclusion for viruses), as well as additional civil authority coverage.

Specifically, they allege that the Los Angeles mayor's order closing nonessential businesses, and the California governor's stay-at-home order, have resulted in physical loss and damage to their properties, including unpaid rent, lack of access, forced business closures due to employees refusing to report to work, and substantial losses in business traffic and clients.

The businesses seek a declaratory judgment to preempt any denial of coverage premised on the position that COVID-19 does not cause physical loss and damage. Just a few days ago, Travelers fired back in federal court seeking a declaration that it has no obligation for claimed losses relating to the COVID-19 pandemic.[2]

### ***Multiple Businesses Seek a Declaration Against Hartford***

More than 20 associated companies involved in the wholesale footwear business have filed a complaint in Santa Barbara Superior Court against the Hartford Fire Insurance Company.[3] The companies allege that their all-risk insurance policy includes business interruption coverage resulting from direct physical loss or damage to their properties (including express coverage for viruses), as well as additional civil authority coverage that does not require a direct physical loss of property.

The companies, which operate across multiple states, broadly allege that the civil authority orders from various state and local governments closing nonessential businesses have resulted in the closures of their retail locations, cancellations of orders, halted payments, and the accumulation of unsellable inventory.

The companies alleged that Hartford has so far failed to confirm coverage of the companies' losses, and that the insurance company has issued statements on its website that "coverage may be unavailable or limited because viruses generally do not cause physical loss or damage to property as required by the policy," and that its civil authority coverage is "designed to cover losses that result from direct physical loss or damage to property caused by hurricanes, fires, wind damage or theft and is not designed to apply in the case of a virus."

In anticipation of a denial of coverage, the companies seek declaratory relief that certain requirements and exclusions (such as a requirement of direct physical loss or virus exclusions) are not applicable or do not bar coverage of their losses.

### ***Illinois Dental Business Files Suit Against Cincinnati Insurance Co.***

A dental business filed a complaint in a federal district court in Illinois against the Cincinnati Insurance Co.[4] The business asserts that it has business interruption coverage (which includes a bacteria exclusion, but not a virus exclusion) and civil authority coverage. The business alleges that it has suffered losses due to the Illinois governor's order to close all nonessential businesses, which includes nonemergency dental work that accounts for most of the business's operations.

The business alleges that the insurance company has already denied coverage by asserting that "from a Civil Authority cause of loss perspective, there must be direct physical damage from a proper cause of loss that eliminates access to your property," and that the presence of COVID-19 does not constitute direct physical damage. The business seeks declaratory judgment that the loss of business income from Illinois' nonessential business closure orders trigger both business interruption and civil authority coverage.

Courts are bracing for a flood of insurance litigation resulting from business losses related to COVID-19 and resulting governmental actions. Given the likely position insurance companies will take to limit or deny coverage based on the specific terms of each insurance policy and the variable responses to COVID-19 by civil authorities, it will be important for business to review policies soon and seek coverage.

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[1] 837 Foothill Blvd. LLC v. The Travelers Indemnity Company of Connecticut, Los Angeles Superior Court, Case No. 20STCV13929; 2420 Honolulu Ave. LLC v. The Travelers Indemnity Company of Connecticut, Los Angeles Superior Court, Case No. 20STCV14000; 10E LLC v. The Travelers Indemnity Company of Connecticut, Los Angeles Superior Court, Case No. 20STCV14043; Mark J. Geragos v. The Travelers Indemnity Company of Connecticut, Los Angeles Superior Court, Case No. 20STCV14073; Geragos & Geragos APC v. The Travelers Indemnity Company of Connecticut, Los Angeles Superior Court, Case No. 20 STCV124022.

[2] Travelers Casualty Insurance Company of America v. Geragos & Geragos APC, Case No. 2:20-cv-03619 (C.D. Cal.).

[3] Moda LLC et al. v. Hartford Fire Insurance Company, Santa Barbara Superior Court, Case No. 20CV01655.

[4] Sandy Point Dental PC v. The Cincinnati Insurance Company et al., U.S. District Court for the Northern District of Illinois, Case No. 1:20-cv-02160.