

# COVID-19 BUSINESS INTERRUPTION

In these unprecedented times with the worldwide outbreak of the COVID-19, Sterling Seacrest Partners is actively monitoring the impact of COVID-19 on our clients and partners. We are here to advocate on your behalf as we all navigate through uncharted waters.

## Commercial Property Insurance - Do I Have Business Interruption Coverage?

While most Commercial Property Insurance policies include coverage for Business Interruption losses, the Property coverage forms usually require *direct property damage* by a covered peril to trigger the coverage for resulting business interruption loss. "Civil Authority" coverage under a standard commercial property policy may extend coverage for loss of business income due to actions or decision of a Civil Authority that limits, restricts or prohibits access to an insured location. However, this coverage is predicated on *direct property damage* by a covered peril to a nearby property (not the insured's property), and generally within a certain radius of the insured's property (such as 1,000 feet). In addition, most property policies include exclusions for pollutants, bacteria and/or viruses. With any claim, policy wording and specific triggers to loss will determine the applicability of coverage.

Similar to the "terrorism" claims we saw in the aftermath of 9/11, commercial insurance solutions for business income and extra expense losses resulting from this type of global pandemic are very limited. In fact, commercial insurers took steps after the SARS outbreak in 2006 to specifically exclude coverage for loss due to virus or bacteria from admitted property policies. In absence of insurance coverage, the government has responded to the COVID-19 pandemic with tax cuts, Coronavirus Aid, Relief and Economic Security (CARES) Act, and the recent stimulus package.

Lawmakers in several states (NJ, Ohio and Massachusetts so far) have proposed bills that would retroactively expand business interruption insurance policies to cover losses due to the COVID-19 outbreak with some possible reimbursement by the state at a future date. If passed, we anticipate a lengthy court battle as insurers will argue with the state's ability to interfere with private contracts and such contracts (excluding coverage for viruses) that were previously approved by state regulators.

In the future, the government could mandate some type of public/private insurance partnership whereby they assume some financial risk alongside the commercial market in response to these types of catastrophic claims. We have seen similar programs in the National Flood Insurance Program and the Terrorism Risk and Insurance Act. Because this type of global outbreak has uncapped financial severity, the commercial insurance market will always struggle to assume this risk without some government back stop.

While the standard Commercial Property insurance policy contains many restrictions and limitations that might preclude coverage for COVID-19 business interruption claims, ultimately, the insurance carrier is responsible for making a coverage determination and/or proving the lack of coverage in their policy forms. Should you elect to file a business interruption claim with your carrier, we have attached a checklist designed for multiple industries that can be utilized for documentation in the initial claim submission. Once a claim is reported, the insurance adjuster will likely require additional supporting information.

# COVID-19 BUSINESS INTERRUPTION CHECKLIST

## Prepare a Timeline

- Maintain a simple diary or timeline of key events including when the interruption started, when partial operations began, end of interruption, etc.
  - For instance, World Health Organization declared a Pandemic (March 11), Shelter in Place began XX/XX/XXXX by \_\_\_\_\_ (city, state,etc).

## Pre-Disaster Financial Statements and Income Tax Returns (from the prior year or years - to compare with the budgets and forecasts for the interruption period vs. historical growth trends)

- Monthly profit and loss statements
- Monthly and daily production (manufacturing) or sales/revenue reports
- Monthly inventory
- Monthly cost account reports
- Invoices and purchase orders

## Post Disaster Business Records

- Track Revenue/Production during the interruption (if any)
  - Actual revenue (Daily sales), if any, during “shut down/interruption” - as compared with actual revenue from same period prior year. Track by day.
- Track Payroll
  - Daily payroll and hourly staffing during interruption period as compared with same timeframe in the prior year.
- Reduction in Census - document reasons\*
  - No admittance policy
  - No referrals due to outside factors
  - Shelter in place
- Reduction in services provided to residents that decrease revenue
- Keep records of any assistance received from the CARE Act or other government programs

\* Healthcare industry specific.



## Record Extra Expenses

- Keep records of paid invoices for extraordinary expenses including security personnel, media, contractors, and other service providers
- Increased costs of production using alternative methods or facilities
- Extra shipping costs
- Increased cost of cleaning and prevention including decontamination cost
- Increased cost of supplies
- Increased cost of technology/equipment to reduce business interruption loss
- Additional wages, over-time or increased pay
- Increased cost due to protection of patients\*

## Records of Non-Continuing Expenses (which will be deducted)

- Postage/shipping (although this could increase depending on business)
- Training expenses
- Travel & entertainment
- Utilities (reduction in expense)
- Office supplies

## Document Actual Cases of COVID-19\* (keep detailed records to include dates, locations, distance from facility)

- Workers
- Residents
- Visitors, including family members
- Other businesses that work with facility - referring doctors, therapy groups, hospitals, etc

\* Healthcare industry specific.