



# COVID-19 BUSINESS INTERRUPTION FAQ

The impact of COVID-19 on American businesses increased dramatically over the last several weeks, further complicating operations for businesses as state and local governments ordered mandatory shutdowns and 'shelter in place' orders. The insurance industry's response to business interruption claims may be impacted by external pressure from legislatures, courts, and public opinion. We do not yet know how the insurance companies will react to this external pressure and whether it will affect their claim determinations. We continue to think the triggering of Business Interruption coverage without physical loss to insured property or neighboring property is going to be an uphill battle. New developments make it prudent to address business interruption coverage in the face of COVID-19: pending legislation in some states, rumors of pending legislation at the federal level, declaratory judgment actions being filed, and the possibility of future class action suits.

Below are the most frequently asked questions and our response:

**Q | My company has lost business due to the Coronavirus or has been forced to close by the Mayor's and/or the Governor's orders. Will my company's loss of income be covered by insurance?**

**A | As with any claim, many factors affect whether a loss will be covered under an insurance policy. The specific facts of a loss, terms and conditions of the policy, and relevant law will govern whether there is coverage.**

- Many property insurance policies include coverage for Business Interruption, which is subject to the terms and conditions of the policy.
- Normally, the trigger for Business Interruption coverage is **direct physical loss** or damage to real or personal property by a covered peril.
- Many property policies include coverage for interruption due to certain **indirect** losses.
  - Civil Authority: This covers loss of business income caused by the action of a Civil Authority that prohibits access to the premises due to direct physical loss or damage to property other than the covered premises, caused by or resulting from a covered peril.
  - Ingress/Egress: Generally, this coverage applies where ingress/egress to the premises is prevented by direct physical damage of the type insured against.
  - Contingent Business Interruption: This coverage is for interruption of the business caused by physical loss or damage to a supplier's or downstream customer's property.

The trigger for coverage for interruption of the business due to one of these **indirect** losses is **physical damage** by a covered peril to a property (not your property) within a specified radius of your premises or a property which is defined as a Dependent Location within the policy.

- There currently is a great deal of discussion and debate about whether loss of income related to COVID-19 is covered under property insurance policies since coverage is triggered by **physical loss or damage**. At this time, our view is that triggering coverage for business interruption without physical loss or damage will be a struggle and will likely only succeed if the courts determine COVID-19 to be a direct physical loss. The determination of if and how COVID-19 would be considered a physical loss is unknown at this time.



- In addition to the normal physical loss or damage trigger for coverage, many property policies contain an exclusion for virus and/or communicable diseases. Insurance companies began adding virus/communicable disease exclusions to property insurance policies after the SARS virus was identified in 2003.
- The insurance carrier has the sole responsibility of determining coverage for claims in the policy. Sterling Seacrest Partners does not have authority to make such coverage determinations.
- Even though a denial of coverage may be likely, that does not mean we are against filing a claim. **If you have incurred a loss and want to file a claim under your policy, we are glad to assist with filing the claim(s). There is limited downside to filing a claim outside of receiving a call from the claim adjuster asking for additional details.**
- We have already seen reports of lawsuits filed against insurance companies challenging the denial of claims for business interruption coverage related to COVID-19. The claim denials are reportedly on the grounds that the business' losses from COVID-19 do not involve physical loss or damage to insured property. We expect insurers will continue denying business interruption claims on this basis, and litigation challenging the denial will continue due to the severity of the losses. Legislatures in at least four states (New Jersey, Ohio, Louisiana, and Massachusetts) have proposed bills that would retroactively expand business interruption policies to cover losses due to COVID-19. We cannot predict the outcome of challenges to policy defenses, whether other states will try to legislate coverage, or if court challenges or government action will have any impact on your potential claim.
- If you decide to proceed with filing a claim, please remember that most policies provide that you must see that the insurer is given prompt notice of the loss or damage and include a description of the property involved. You must also, as soon as possible, give the insurer a description of how, when and where the loss or damage occurred.

#### **Q | What type of information would I need to support the claim or document the loss?**

**A | Filing a business interruption claim has the potential to tie up a significant amount of your time. A detailed sample checklist of information that should be tracked and maintained is available [here](#) on our website. If you plan to file a claim, we recommend that you take the following steps at a minimum:**

- Maintain a timeline of key events, including when the interruption started, when partial operations began, when operations shutdown, and the end of interruption, etc.
- Document actual cases of COVID-19 (workers, residents, visitors, other businesses that work with company).
- Document any actions by a Civil Authority, or circumstances under which ingress/egress is prohibited to the insured property, or loss or damage to a supplier's or customer's property, if applicable.
- Keep up to date and accurate records of the company's income and expenses (past, present, and future).
- Document any direct damage and additional expenses (clean up, decontamination, additional employee expenses, etc.) specific to COVID-19 and the reason why the expenses were necessary in the wake of the pandemic (to protect employees, consumers, business partners, etc.). Consider using a new COVID-19 general ledger number for this purpose.