



Among the many disruptions and concerns to businesses caused by COVID-19 is lost income due to closure or limitations on operations. Is there insurance coverage to recoup lost business income? The short answer is probably no, but it depends on the language in each policy. While most businesses have insurance coverage in their commercial property policies for “Business Income” and “Extra Expense” due to a suspension of operations, those coverages usually require the suspension to be caused by direct physical loss or damage to the insureds’ covered property (for example, its premises). While weather-related events causing damage to a business’s property satisfy this requirement (for example, storms, tornados and earthquakes), viruses such as COVID-19 present a unique question of coverage for business losses because there is no physical loss of or damage to property.

If a business must close because of confirmed COVID-19 contamination that requires cleanup and replacement of business personal property, there might be an argument of physical loss of or damage to property that causes lost business income. However, exclusions for microorganisms (mold, bacteria, and can include viruses) that are usually in those policies would preclude coverage. And, while there typically also is “civil authority” coverage in commercial property policies due to actions by government agencies prohibiting access, such coverage too typically requires there be direct physical loss of or damage to property to recover any associated lost business income. Some policies contain broader language making the required direct physical loss of or damage to property to be property within a distance near the business’s premises. This language could create an argument supporting coverage if a business is located near a confirmed virus outbreak, but it depends on the breadth of the language and whether there are any exclusions like those identified above.

ENHANCED COMMERCIAL PROPERTY COVERAGE

So, where might a business look for potential coverage of its business losses due to COVID-19? In some industries, such as retail and hospitality, businesses have obtained specific add-on coverage to their commercial property policies for microorganisms that provides reimbursement for business income losses. Usually, though, that coverage is limited to fungi (for example, mold) or certain bacteria, but not viruses, unless specifically included in the definition. And, the policies may still have specific exclusions for viruses or communicable diseases.

ENVIRONMENTAL POLICIES

Another source may be an environmental policy. Environmental policies typically deal with outdoor concerns and not indoor concerns, and therefore have no or limited coverage related to biological contamination. That said, environmental policies have adapted in the last few years to include viruses as pollutants, but only if the policy specifically defines the term “pollutant” to include microbial matters broadly without limitation or to include viruses specifically. In addition, covered damages may not include lost business income unless the policy broadly identifies covered damages to include lost business income.

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BUSINESS INTERRUPTED BY COVID-19? CHECK YOUR INSURANCE POLICY FOR LOST BUSINESS INCOME COVERAGE

by Darin Brooks and Brian Waters
March 17, 2020

Finally, while there may not be coverage for lost business income, some policies do provide limited reimbursement coverage for cleanup of identified microorganism damage if the term “microorganism” specifically includes viruses. This coverage is limited to a small amount typically (for example, \$25,000).

BOTTOM LINE

Coverage for lost business income due to COVID-19 or other communicable diseases is unlikely in insurance policies. That said, it is worth a review of your policies to determine whether there may be some insurance coverage.

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