

Submitting a Claim Under a Business Interruption Insurance Policy

Most companies, as part of their insurance package, carry a form of insurance known as “business interruption insurance.” Questions have been raised concerning whether a business that is forced to shut down some or all of its operations may make a claim under its business interruption insurance. Most recently, companies are inquiring whether business interruption insurance would provide relief for losses caused by the COVID-19 pandemic. In light of recent events, we recommend policyholders review their coverage—including all endorsements—and, to the extent that there is any possible claim for recovery, provide their carrier with notice of a claim or potential claim.

While policies vary, business interruption insurance generally provides coverage for lost income associated with a decrease in revenues or an increase in costs suffered as a result of unforeseen occurrences. Some policies also provide contingent coverage for indirect losses resulting from a supply chain disruption where there is a critical business dependency on vendors. Generally, however, business interruption results from physical forces that shut down an insured’s premises due to events such as fire, hurricane or earthquake, labor strife and other unforeseen events. While there is a substantial question as to whether these policies would cover a business that has shut down due to federal or state executive “stay at home” orders, that issue has yet to be judicially determined. In addition, a number of state legislatures, including New York, have introduced bills to force insurance carriers to cover COVID-19-related losses. As of this writing, none of these proposed bills has passed. It should be noted that many policies exclude coverage if the business is interrupted due to a bacterial or viral event, such as the one we are experiencing now. Nevertheless, the issue is untested in New York.

With so much uncertainty at the moment, policyholders should carefully review the business interruption provisions of their insurance policies. Policyholders should make a claim on their insurance if there is any chance of coverage, even if remote. Even where it is likely that the claim may initially be denied, unless notice of a claim is given, a policyholder will not receive coverage even if courts later determine that coverage was required under similar policies. In the current environment, it is uncertain how courts and legislatures will address these issues, making it more imperative for policyholders to preserve their rights by sending an appropriate notice.

It is also important that policyholders who make a claim follow the notice provisions and claims procedures exactly as set forth in their policies. Oftentimes a broker will file a claim on behalf of a policyholder, but it is important to note that notice to a broker is not notice to a carrier. While companies should work with their brokers, brokers are not attorneys, and brokers do not owe a fiduciary duty to their insurance customers. Moreover, legal advice should only be given by competent and qualified legal counsel. Our firm is available to assist our clients, friends and colleagues with these and other issues.

Further Help

We understand that at this time of crises these additional requirements may prove difficult for many employers. They also may be the springboard for litigation and problems down the road. Our team stands ready to help. For further assistance, do not hesitate to call any member of our team:

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