

ISSUES RELATED TO BUSINESS INTERRUPTION INSURANCE

**DOES BUSINESS
INTERRUPTION
COVERAGE
COVER LOSSES
CAUSED BY THE
COVID-19 VIRUS?**

- Coverage will be dependent on the policy language but, in general, we do not believe losses due to COVID-19 will be covered.
- Why?
- To recover under the business interruption coverage, losses must be related to physical damage inflicted upon the insured property. There is arguably no physical damage predicate in the context of the COVID-19 pandemic.
- Almost every commercial policy with a business interruption component contains an explicit exclusion for any losses caused by any virus. COVID-19 is the virus responsible for the current pandemic and the related business shutdown. The exclusion precludes coverage here.
- Pandemics and excluded in policies because they are uninsurable.

PRESIDENT TRUMP ON BUSINESS INTERRUPTION COVERAGE

- In a press conference on April 10, 2020, President Trump discussed insurance companies collecting premium for business-interruption insurance for years and not providing the coverage when businesses needed it. President Trump has conflicting quotes on the topic. On one hand he says he can't let insurance companies deny these claims, but also says in some cases pandemics are excluded.
- Trump said. "We can't let that happen."
- Now, in some cases it is; it's an exclusion. But in a lot of cases I don't see it. I don't see reference that they don't want to pay up.
- "I would like to see the insurance companies pay if they need to pay, if it's fair."

LAWSUITS REGARDING BUSINESS INTERRUPTION

- Several lawsuits have been filed because of denied coverage. Many policies exclude coverage for pandemics or viruses.
- Lawyers argue that insurers are liable for business interruption because civil authorities forced the closure of the businesses.
- Defense attorneys argue that insurance companies aren't responsible for business interruption as a precaution to stop the spread of contamination, but that coverage is implemented when there is physical damage.

- Legislation has been introduced in at least seven states requiring retroactive coverage for business interruption. States include Louisiana, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, and South Carolina.
- Some proposals:
- Require that policies that include coverage for business interruption be construed to include coverage during the state of emergency for COVID;
- Require automatic renewal at the current rate;
- Limit applicability to coverage issued to companies with 150 or fewer full-time employees;

**LEGISLATIVE
PROPOSALS TO
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- Provide that exclusions for viruses or other microorganisms are null and void;
- Provide that the coverage amount is limited to policy limits;
- Provide that an insurer cannot deny a claim because there is no physical damage to the property;
- Provide this coverage only during the declared state of emergency; or
- Create a mechanism to reimburse insurers paying claims by assessments against other insurers.

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PROBLEMS WITH REQUIRING INSURERS TO COVER BUSINESS INTERRUPTION LOSSES

Costs - The losses associated with a pandemic are beyond what the insurance mechanism can cover. Unlike natural disasters, insurers cannot diversify their losses. To provide coverage for such widespread and significant losses, insurers would have had to charge premiums that most businesses would have found prohibitive.

An analysis by APCIA estimates that for businesses with 100 or fewer employees, losses could run between \$220 billion and \$383 billion **per month**. U.S. home, auto and business insurers have about \$800 billion surplus to pay all future losses.

Constitutional Issues - Such proposals could violate the United States Constitution and state constitutions. The US Constitution provides that no state shall pass “any Law impairing the Obligation of Contracts.” The Florida Constitution provides that “no law impairing the obligation of contracts shall be passed.”

POSSIBLE SOLUTIONS FOR BUSINESSES

- Instead of relying on legislation that rewrites insurance contracts, businesses may have other options.
- Paycheck Protection Loans Administered by the Small Business Administration - Created by the federal CARES Act, this program allows businesses to take out loans to pay for rent, utilities, and payments to employees. If the loan proceeds are used in accordance with the Act's requirements, the loan can be completely forgiven.
- <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp>
- EIDL Loans Administered by the SBA - The program provides an Economic Injury Disaster Loan advance of up to \$10,000. This advance will provide economic relief to businesses that are currently experiencing a temporary loss of revenue. Funds will be made available following a successful application. This loan advance will not have to be repaid.
- <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/economic-injury-disaster-loan-emergency-advance>
- These programs currently lack appropriations but Congress is expected to meet later this month to consider more funding.

**APCIA SUPPORTS
THE CREATION
OF NATIONAL
RECOVERY FUND**

- The APCIA and other national organizations support the creation of a national recovery fund. The COVID-19 Business and Employee Continuity and Recovery Fund (“Recovery Fund”) would be funded by the federal government and under the authority of a special federal administrator with the ability to enter into contracts with interested businesses to administer the Recovery Fund and facilitate the distribution of federal funds and liquidity to impacted businesses and their employees. The requested relief would be designed to help businesses retain and rehire employees, maintain worker benefits, and meet operating expense obligations. Strong anti-abuse provisions, including audits and Special Inspector General oversight, would be included.