Business Interruption Policies and Coronavirus

As the coronavirus (COVID-19) outbreak evolves, businesses face growing uncertainty as to how this pandemic will affect their operations long term. This is especially true when you consider that many organizations—including bars, restaurants, entertainment venues, retailers and manufacturers—have had to close their doors or cease operations as a result of COVID-19. Not only has this severely impacted their ability to serve their customers, but, for some, it has also led to indefinite disruptions—disruptions that could impact their bottom line.

As a result of the unprecedented challenges COVID-19 brings, many businesses are turning to insurance, like business interruption insurance, for help. In the event of a loss, business interruption insurance provides coverage for income a business would have earned had it been operating normally. It can also help pay for expenses like employee wages, taxes, rent, loan payments, and relocation expenses.

However, these policies are complex, and protection for losses stemming from COVID-19 is typically not included. This article highlights characteristics and types of businesses interruption insurance, examining how the policies may or may not cover the outbreak.

Designated Perils

Under most business interruption insurance policies, coverage is only available if the loss in question stems from a covered peril. In many cases, covered perils include common interruptions like natural disasters, equipment damage, and vandalism.

This means that, if the insurance policy requires a specific loss (e.g., a fire or earthquake) and the loss in question doesn't qualify or is not stated explicitly, coverage may not be available. For the vast majority of businesses, COVID-19 will not constitute a designated peril, and business interruption insurance will not respond to losses.

Further, business interruption claims may arise from multiple causes, including both covered and uncovered perils. In these instances, the availability of coverage will depend on the policy language and any applicable laws regarding concurrent causes. Once again, coverage for COVID-19-related losses is unlikely.

Direct Physical Losses

Business interruption insurance is typically triggered by a direct physical loss or damage. Under this interpretation, contagious diseases like COVID-19 would likely not count as a covered loss. This is especially true as it relates to mandatory or voluntary closures stemming from human-to-human transmission of infectious diseases where a business's physical location is still habitable.

However, some argue that COVID-19 can contaminate physical objects like HVAC systems or assembly lines, which in turn would force businesses to cease operations. In these scenarios, business interruption insurance could provide some protection. Still, most policy interpretations will make coverage unavailable. What's more, most policies exclude coverage for viruses and other health crises altogether.

Civil Authority Coverage

In some cases, policies may extend business interruption coverage for losses that arise from civil authority orders. This essentially means that, if a business is unable to access its property due to government-mandated closures, coverage may be available. However, in most cases, a direct physical loss to an adjacent or nearby property is required in order for civil authority coverage to kick in. As such, businesses need to review their policies alongside their insurance professional to determine if civil authority coverage is available. For most insureds, civil authority clauses will not apply for losses stemming from COVID-19.

Endorsements for Infectious Diseases and Pandemics

While it's true that traditional business interruption insurance policies may not extend to losses that arise from a health crisis or pandemic, specialized coverage for these disruptions may be available:

- **Communicable and infectious diseases coverage for hospitality and health care operations**—Businesses in the hospitality or health care industry can secure dedicated coverage or endorsements for losses caused by communicable or infectious diseases. One benefit of this coverage is that a direct physical loss is generally not required for the policy to go into effect.
- **Pandemic-specific coverage**—While past health crises, like the Ebola outbreak, led some insurers to exclude coverage for pandemics, others created specialized business interruption policies. These policies were created for operations like hospitals, hotels, airports, shopping centers, restaurants, theaters, gyms, and other establishments that may have to close their doors as the result of a pandemic. While many of these policies were created specifically for Ebola, similar coverage may be available for COVID-19.

The availability of these forms of coverage will depend largely on the carrier and the insured. That said, it's important for businesses to review their coverage with their insurance professional.

Contingent Business Interruption Insurance

Business interruption insurance is a crucial component of risk management programs, but it does not extend to disruptions to a third party. That's where contingent business interruption insurance (CBI) comes in.

Unlike traditional business interruption insurance that compensates the policyholder for a loss resulting from damage to its own property, CBI lets businesses transfer the risk of certain losses to the property of a third party. CBI reimburses policyholders for lost profits and extra expenses resulting from an interruption of business at the premises of a customer, vendor, supplier or other third party.

This type of coverage is increasingly important as COVID-19 continues to affect the global economy. Even if a business is not located in an area where COVID-19 has been detected, aspects of their supply chain might be, leading to potential disruptions.

In fact, in China—where COVID-19 originated—many workers have been ordered to stay home, forcing some manufacturers to halt operations. Without access to the products or components they need, businesses that partner with these manufactures also have to stop distribution.

While CBI could provide coverage in this scenario, there are caveats. With CBI, the covered third-party property may be specifically named, or the coverage may simply blanket all customers and suppliers. Insureds will have to review policy language to ensure their suppliers are included in the policy.

Additionally, similar to traditional business interruption policies, some form of property damage will need to occur before coverage is triggered. Again, contamination will likely not constitute property damage.

Moving Forward

As the COVID-19 situation evolves, more organizations are looking to business interruption insurance, hoping it will respond to losses and help them weather the outbreak. However, COVID-19 is uncharted territory, and a number of factors come into play when it comes to insurability. In the vast majority of cases, business interruption policies will not apply to COVID-19 losses.

Moving forward, businesses should review their insurance programs to:

- Ensure the policies they have in place provide sufficient protection
- Avoid overlooking unique exposures COVID-19 brings
- Determine how COVID-19 could impact their various lines of insurance beyond business interruption coverage.

Contact one of NGWA’s insurance partners to continue the discussion today.

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