

COVID-19 and Business Interruption Insurance: Are You Covered? Proposed Legislation May Help

Articles, COVID 19: Answers to Business Challenges April 20, 2020

Business owners have described the moment they read the letter from their insurance company denying them coverage for business interruptions losses as “lowest point of this [COVID-19] experience.”[1]

Business interruption insurance (also known as business income insurance) is a type of insurance that covers the loss of income that a business suffers after a disaster. The income loss covered may be due to disaster-related closing of the business facility or due to the rebuilding process after a disaster.[2]

Both the Pennsylvania House and Senate have proposed legislation to require insurance companies to cover business interruption claims.

- PA Senate Bill 1114

On April 15, 2020, the Pennsylvania Senate introduced legislation (SB 1114), co-sponsored by State Senator Wayne D. Fontana of Allegheny County, to require that insurance policies that insure against losses “related to property damage, including the loss of use and occupancy and business interruption” be construed to include “loss or property damage due to COVID-19 and coverage for loss due to a civil authority order related to the declared disaster emergency...”

In many instances insurance companies have denied claims for business interruption alleging COVID-19 has not caused physical damage to the business or business property, such as Hurricane Katrina caused to businesses in affected states along the Gulf of Mexico.

Under the Senate’s proposed legislation, small businesses may find relief. The legislation proposes that an insurance company’s indemnification obligation would be “subject to the policy limits for loss of business or business interruption and subject to the maximum individual policy limits.”

A small business could receive 100% of the policy limit for eligible claims for covered losses and other businesses could receive 75% of the policy limit.

Senate Bill 1114 would only apply to active insurance policies with effective dates before March 6, 2020, which is the date of Governor Tom Wolf’s COVID-19 emergency declaration.

- PA House Bill 2372

The State Senate’s proposed legislation is similar to HB 2372, introduced on April 3, 2020, that would require an insurer to cover and indemnify insureds suffering business interruption coverage due to the ongoing COVID-19 pandemic, “subject to the broadest or greatest limit and lowest deductible afforded to the business interruption coverage under the insurance policy.”

The House Bill also allows any insurer which pays for such COVID-19-related losses to “apply to the [Pennsylvania] commissioner for relief and reimbursement by the commissioner from money collected and made available for this purpose” The bill empowers the commissioner to establish eligibility procedures for the submission and qualification of reimbursement claims.

The House Bill would apply to business owners with fewer than 100 eligible employees with insurance policies that were effective on March 6, 2020.

The State Senate and House bills discussed in this article remain in committee as of the date this article was published.

- Ongoing Litigation

Policy holders (many of them restaurants) all over the United States who were denied coverage for business interruption or business loss due to COVID-19 have filed law suits against their insurance carriers asking Courts to declare that COVID-19 losses are covered by their respective policy. See e.g., *Cajun Conti, LLC d/b/a Ocean Grill v. Underwriters at Lloyd's London et. al.*, Case No. unknown, in the Civil District Court for the Parish of Orleans, State of Louisiana; *Choctaw Nation of Oklahoma v. Lexington Ins. Co., et al.*, No CV-20-42 (Okla. Dist. Ct. – Bryan County); *Chickasaw Nation Dept. of Commerce v. Lexington Ins. Co., et al.*, No. CV-2020-00035 (Okla. Dist. Ct. – Pontotoc County); *John Grill, Inc. v. Hartford Financial Services Group, Inc. et al.*, Case No. unknown (Super. Ct. – San Francisco County); *Joseph Tambellini, Inc. d/b/a Joseph Tambellini Restaurant v. Erie Insurance Exchange*, GD-20-5137 (Ct. of Comm. Plea – Allegheny County).

Navigating ever changing laws and insurance regulations while running a full time business during a crisis is no small feat. Contact Daniel Conlon today for a consultation to better understand the impact state legislation and ongoing litigation that may impact your business interruption insurance policies.

[1] Elejalde-Ruiz, A., 2020. *Business Owners Bleeding Money During The Coronavirus Shutdown May Expect Insurance To Cover Their Losses. But Often They're In For A Shock*. Chicago Tribune Newspaper, Available at: <https://www.chicagotribune.com/coronavirus/ct-coronavirus-business-interruption-insurance-lawsuits-20200416-b5kl3xaweja7refbqfr4cchkp3u-story.html> (Accessed April 19, 2020).

[2] En.wikipedia.org. 2020. *Business Interruption Insurance*. Available at: https://en.wikipedia.org/wiki/Business_interruption_insurance#cite_ref-1 (Accessed April 19, 2020).