



NHDA INSURANCE INDUSTRY UPDATE

4/20/2020

S.W.A.N. (Sleep Well At Night)



What is Business Interruption Insurance?

- Business Interruption is a Property Damage Coverage
- It is paid on a time limit i.e. 12 months ALS, 72hr deductible
- It is a first party claim
- It covers the measurable loss of income after the loss occurs
- Virus/Bacteria is a typical exclusion on ISO coverage forms.
- So far COVID19 is not covered because :
 - *Virus Exclusions standard in most policies*
 - *Evidence of Property Damage is difficult to provide (may need test of premises)*
 - *Insurers are very hesitant to accept claims and jeopardize*

Verbiage In Your Policy to Help Your Case?

- Civil Authority - There are normally distance qualifiers, time limits and always the premise that the Civil Order is in response to “direct physical damage of type ins
- Ingress/Egress Coverage – Coverage when access to location is prohibited
- Contingent Business Interruption - Provides coverage for losses resulting from disruptions in a company’s supply chain
- Trade Disruption Coverage - provides coverage for loss of earnings, extra expense and contractual penalties resulting from delays or disruption of trade, arising out of specific perils such as governmental closure of ports and borders



SHOULD I FILE A
CLAIM?

YES



FEDERAL LEGISLATION

H.R. 6494 (4/14/2020)

- "Any exclusion in a contract for business interruption insurance that is in force on the **date of the enactment of this Act** shall be void to the extent that it excludes [these] losses."
 - "Any State approval of any exclusion of losses from a contract for business interruption insurance that is in force on the date of the enactment of this Act shall be void to the extent that it excludes [these] losses"
- [These] losses are :
 - (A) any viral pandemic;
 - (B) any forced closure of businesses, or mandatory evacuation, by law or order of any government or governmental officer or agency, including the Federal Government and State and local governments; or
 - (C) any power shut-off conducted for public safety purposes; and

LOUISIANA

Senate Bill 477 (3/31/2020)

Applies to :

"[E]very policy of insurance in force in this state on March 11, 2020, and thereafter insuring against loss or damage to property that includes the loss of use, loss of occupancy, or business interruption"

"[E]very policy of insurance in force in this state on March 11, 2020, and thereafter insuring against loss or damage to property that includes the loss of use, loss of occupancy, or business interruption shall be construed to include among the perils covered under that policy, coverage for business interruption due to imminent threat posed by COVID-19 as provided in Proclamation Number 25 JBE 2020, declaring the existence of a statewide public health emergency."

Retro - Yes

Massachusetts

Senate Docket 2888 (3/24/2020)

- Applies To :
- Insureds with less than 150 full time employees
- In force policies with effective dates during or prior to the enactment of the act
- Insurance Carriers may apply for relief
- "[N]o insurer in the commonwealth may deny a claim for the loss of use and occupancy and business interruption on account of (i) COVID-19 being a virus (even if the relevant insurance policy excludes losses resulting from viruses); or (ii) there being no physical damage to the property of the insured or to any other relevant property."

Retro - Yes

NEW JERSEY

Assembly Bill 3844 (3/16/2020)

- Applies To :
- Policies issued to insureds with less than 100 eligible employees, in the State of New Jersey. Eligible employee means FT employee who works a normal week of 25 or more hours.
- "[E]very policy of insurance insuring against loss or damage to property, which includes the loss of use and occupancy and business interruption in force in this State on the effective date of this act, shall be construed to include among the covered perils under that policy, coverage for business interruption due to global virus transmission or pandemic, as provided in the Public Health Emergency and State of Emergency declared by the Governor in Executive Order 103 of 2020 concerning the coronavirus disease 2019 pandemic."

Retro - Unclear

NEW YORK

Senate Bill SB178 (4/13/2020)

- Policies issued to insureds with less than 100 eligible employees, in the State of New York. Eligible employee means FT employee who works a normal week of 25 or more hours.
- Carriers may apply for relief from Commissioner of Banking and Insurance
- (originally had Retroactive clause that was stricken)
- "[E]very policy of insurance insuring against loss or damage to property, which includes the loss of use and occupancy and business interruption in force in this State on the effective date of this act, shall be construed to include among the covered perils under that policy, coverage for business interruption due to global virus transmission or pandemic, as provided in the Public Health Emergency and State of Emergency declared by the Governor in Executive Order 103 of 2020 concerning the coronavirus disease 2019 pandemic."

Retro - Unclear

OHIO

House Bill 589 (3/24/2020)

- Policies that insure against loss or damage to property, which includes the loss of use and occupancy and business interruption, issued to businesses located in Ohio that employ one hundred (100) or fewer employees.
- "[E]very policy of insurance insuring against loss or damage to property, which includes the loss of use and occupancy and business interruption, in force in this state on the effective date of this section, shall be construed to include among the covered perils under that policy, coverage for business interruption due to global virus transmission or pandemic during the state of emergency."

PENNSYLVANIA

SENATE BILL 1114 (4/15/2020)

- "[A] policy of insurance insuring against a loss related to property damage, including the loss of use and occupancy and business interruption, shall be construed to include among the covered perils coverage for loss or property damage due to COVID-19 and coverage for loss due to a civil authority order related to the declared disaster emergency and exigencies caused by the COVID-19 disease pandemic."
- (1) To active insurance policies with effective dates prior to March 6, 2020.
- (2) To insurance companies providing coverage against loss or damage to property, which includes the loss of use and occupancy, and business interruption in this Commonwealth.

Retro - Yes

SOUTH CAROLINA

SENATE BILL 1188 (4/8/2020)

- Applies to insureds with one hundred fifty (150) or fewer full-time equivalent employees, and that are in force on the effective date of this act or become effective prior to the date on which the Governor's state of emergency declaration expires.
- "[N]o insurer in this State may deny a claim for a loss of use and occupancy, or business interruption, with respect to COVID-19, including, but not limited to, attempted insurer denials on account of:
 - (1) COVID-19 being a virus, even if the relevant insurance policy excludes losses resulting from viruses;
 - (2) there being no physical damage to the property of the insured or to any other relevant property; or
 - (3) orders issued by any civil authority, or acts or decisions of a governmental entity."

Retro - Yes

CA ORDERS CARRIERS TO REFUND MARCH/APRIL PREMIUMS

- BULLETIN 2020-3 (4/13/2020)
- Re : Premium Refunds, Credits, and Reductions in Response to COVID-19
- Commissioner Lara hereby orders insurers to make an initial premium refund for the months of March and April to all adversely impacted California policyholders in the following lines of insurance, as quickly as practicable, but in any event no later than 120 days after the date of this Bulletin
 - UC Davis' Special Report on Impact of COVID-19 on California Traffic Accidents, reduced driving has resulted in fewer accidents, injuries, and fatalities on public highways and roads (cited)
 - Auto/GL/Workers' Comp insurance
 - **Any other line of coverage where the measures of risk have become substantially overstated as a result of the pandemic**



ARE THESE MEASURES ENFORCEABLE?

We Will Find Out
May Require Supreme Court Ruling



WHAT DO WE DO NOW?

- File a business income claim to reserve your rights if laws change
- Provide information to IC's that work for you (see our guide to managing insurance cost for IC's on the NHDA website)
- Have a Bad Faith attorney in your state review your policy
- See if any current lawsuits against business interruption are successful and how the cases are built (We have been keeping tabs on cases in each state to see what is being argued)

COVID-19 Business Interruption Coverage Legislative Summary (As of 4/17/2020)

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For more information, contact Ryan P. Maxwell, Esq. (rpm@hurwitzfine.com)



SWAN INSURANCE
SLEEP WELL AT NIGHT

THANK YOU!

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