

COVID-19



CORONAVIRUS: COVID-19 AND BUSINESS INTERRUPTION INSURANCE

March 19, 2020

By: David E. Rogers, Scott C. Nehrbass, and A. Nicole Rose

Foulston has produced a series of issue alerts as we continue to monitor the evolving COVID-19 situation and provide additional guidance. Please find all updates and our latest resources available [here](#).

As COVID-19 wreaks havoc on the business community, owners are rightfully looking for ways to soften the economic blow. This should include reviewing business insurance policies to determine whether they cover losses for business interruption and, if so, whether they will cover losses caused by the pandemic. Though the answers to these questions will always depend on the specific terms of each insurance policy, this article is intended to provide some helpful guidance on the issue.

WHAT IS BUSINESS INTERRUPTION INSURANCE?

Business interruption insurance — sometimes called business disruption insurance — is usually an endorsement to a business's commercial property insurance policy and is intended to protect businesses against income losses sustained as a result of disruptions to their operations.

Some businesses also may have purchased a specialized form of business-interruption coverage called contingent business interruption coverage. Contingent business interruption coverage typically provides insurance for losses resulting from disruptions to a business's suppliers, as long as the underlying cause of damage to the supplier is of the type covered by the insured business's own property policy.

DO I HAVE COVERAGE FOR COVID-19 LOSSES?

There is no simple answer to the question everyone is asking: does my business interruption insurance cover my business's COVID-19 related losses? The answer will always depend on the language of your insurance policy. That said, both types of business interruption insurance typically require damage to property and most policies will require the insured to show a "physical loss" before coverage exists. So, the question becomes whether COVID-19 might constitute a physical loss or damage to property.

FOULSTON

ATTORNEYS AT LAW

It depends. Courts across the country have not settled on a uniform rule for when insured property has suffered a physical loss. Some courts have held that contamination and other incidents that render property uninhabitable or otherwise unfit for its intended use constitutes a “physical loss” sufficient to trigger business interruption coverage. If your business is located in a state where the courts follow this rule and may have been host to someone with COVID-19, then coverage is a possibility. However, after the SARS outbreak in 2003, many insurance companies began adding provisions to their policies that specifically exclude coverage for any disease-related losses, including those caused by a virus.

Ultimately, then, whether your business interruption insurance may provide coverage for COVID-19 losses depends not only on your policy language but also on what state your business is located in and the factual circumstances surrounding your particular loss.

IS BUSINESS INTERRUPTION INSURANCE THE ONLY INSURANCE THAT MAY COVER COVID-19 LOSSES?

Other types of insurance exist that could possibly cover COVID-19 losses, though they are less common. For example, some insurance policies expressly provide coverage for losses caused by communicable or infectious diseases without requiring physical damage to insured property. Such policies are primarily sold to businesses in the hospitality and healthcare industries, but you should check your policy regardless of your industry.

Some policies also provide coverage for business losses due to a civil authority prohibiting or impairing access to the business's premises. A common scenario for this type of coverage is the temporary closing of a restaurant or nightclub pending investigation of a crime committed there. As with all insurance, each policy's wording may differ in important ways. Civil authority coverage may or may not require a physical loss to the insured business's property. If you have civil authority coverage that does *not* require physical loss and a federal, state, or local governmental authority limits or prohibits access to your business due to COVID-19, your insurance policy may provide coverage for your related losses. In addition, if you have contingent business interruption coverage and civil authority coverage, and civil authority interrupts your business's suppliers or customers, then you may also have coverage for the business's own indirect loss of income.

THE BOTTOM LINE

If your business suffers direct or indirect losses due to the COVID-19 pandemic, you should take a close look at your commercial property policy and all other insurance policies for your business to determine whether you have the types of coverage discussed in this article. If you are not sure, then it may be time to consult an attorney who regularly handles insurance coverage questions.

FOR MORE INFORMATION

If you have questions or want more information regarding insurance coverage and COVID-19, contact your legal counsel. If you do not have regular counsel for such matters, Foulston Siefkin LLP would welcome the opportunity to work with you to meet your specific business needs. Foulston's insurance litigation lawyers maintain a high level of expertise regarding insurance coverage issues and considerations. At the same time, Foulston's other practice groups, including the taxation, general business, healthcare, labor and employment, and litigation groups enhance our ability to consider the legal ramifications of these situations. For more information, contact **David Rogers**, 316.291.9708 or drogers@foulston.com in Wichita, or **Scott Nehrbass**, 913.253.2144 or snehrbass@foulston.com in Overland Park. For more information on the firm, please visit our website at www.foulston.com.

Established in 1919, Foulston Siefkin is the largest law firm in Kansas. With offices in Wichita, Kansas City, and Topeka, Foulston provides a full range of legal services to clients in the areas of administrative & regulatory; antitrust & trade regulation; appellate law; banking & financial services; business & corporate; construction; creditors' rights & bankruptcy; e-commerce; education & public entity; elder law; emerging small

FOULSTON

ATTORNEYS AT LAW

business; employee benefits & ERISA; employment & labor; energy; environmental; ERISA litigation; estate planning & probate; family business enterprise; franchise & distribution; government investigations & white collar defense; governmental liability; government relations & public policy; healthcare; immigration; insurance regulatory; intellectual property; litigation & disputes; long-term care; mediation/dispute resolution; mergers & acquisitions; Native American law; oil, gas & minerals; OSHA; privacy & data security; private equity & venture capital; product liability; professional malpractice; real estate; securities & corporate finance; supply chain management; tax exempt organizations; taxation; trade secret & noncompete litigation; water rights; and wind & solar energy.

RESOURCES

Sign up to receive these issue alerts straight to your inbox here.

This update has been prepared by Foulston Siefkin LLP for informational purposes only. It is not a legal opinion; it does not provide legal advice for any purpose; and it neither creates nor constitutes evidence of an attorney-client relationship

PRACTICE AREAS

- Insurance Regulatory
- Healthcare
- Insurance Defense Litigation
- Litigation & Disputes