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INSIGHT

Business Interruption Insurance and COVID-19

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The economic disruption from the Coronavirus Disease 2019 (COVID-19) pandemic has provoked debate among insurers, policyholders, and other stakeholders about who is responsible for these losses. The loss of income from mandatory or voluntary closures, supply chain disruptions, and reduced demand due to social distancing measures has induced businesses of all sizes to seek compensation from insurers. The focus of the policy debate has been on commercial insurance that covered income losses from business interruption (BI) and similar insurance that covered losses from event cancellation. Such concerns may be revived as businesses consider closures due to the Omicron variant.

Commercial Property Insurance

Most businesses carry commercial property insurance, including coverage for damage to their building and contents due to a covered cause, such as a fire or windstorm. Viruses and infectious diseases are generally not designated perils in a standard policy, although all-risks coverage might include COVID-19.

Following previous health crises, many policies now contain explicit exclusions for virus or bacterial losses. In 2006, the Insurance Services Office introduced an exclusion for loss due to virus or bacteria that applies to property damage to buildings or personal property and endorsements that cover business income, extra expense, or action of civil authority. This language excludes coverage for loss or damage resulting from any virus or microorganism that induces physical distress, illness, or disease.

Physical Loss or Damage Requirement

Property insurance policies typically require direct physical loss or damage to tangible property. For policies without an exclusion for viruses, the determination of coverage related to the coronavirus may turn on the definition of physical damage. When a business remains habitable but has been closed as part of a mandatory or voluntary closure to protect against contamination, it has probably not suffered a direct physical loss. If a property has become physically contaminated and uninhabitable due to coronavirus, there may be a basis to claim that a direct physical loss has occurred. Many lawsuits challenging the physical damage requirement have been filed, arguing that the virus physically infects the surface of

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materials and contamination of the insured premises by the coronavirus is a direct physical loss needing remediation.

Business Interruption Insurance

Business interruption (BI) insurance can be an add-on to a property insurance policy, or a stand-alone policy, covering loss of income, contingent BI, and possibly losses due to actions by civil authorities. It typically covers business losses directly or indirectly caused by a covered peril—loss of profits, fixed costs (operating expenses and other costs still being incurred), cost of actions taken to mitigate the loss, and reasonable expenses to allow the business to continue operating.

Business Income Coverage

Business income coverage provides coverage for sustained loss of income due to the necessary suspension of the policyholder's operations. For example, if fire damage shuts down a factory, the business income coverage usually pays for lost income until the damage can be repaired and production can be restored. The suspension, however, must be caused by a covered cause that results in direct physical loss or damage to the property.

Contingent Business Interruption

Contingent business interruption coverage covers a policyholder's business losses resulting from loss, damage, or destruction of property owned by others, as long as the underlying cause of damage to the supplier or customer is of the type covered by the insured's own property policy. For example, if a windstorm were to damage a supplier's factory and prevent it from producing component parts essential to an insured business's operation, the business would be able to claim under contingent BI coverage.

Civil Authority Coverage

Civil authority coverage provides coverage for BI losses when a civil authority prohibits or impairs access to the policyholder's premises. Depending on specific wording, a policy's civil authority coverage may require that the access restriction results from physical loss. Some courts have rejected coverage for losses sustained as a result of civil authority orders that were designed to prevent future damage rather than address existing property damage, such as evacuation in advance of a hurricane.

Legislative Actions Related to Business Interruption Insurance

Many policyholders who had purchased BI insurance submitted claims to their insurers. However, insurers were largely reluctant to cover COVID-related losses. Both individual insurance carriers and the industry as a whole assert that BI claims related to the COVID-19 pandemic are not covered, particularly as many BI policies expressly exclude coverage for viruses. The disputes largely center on the extent to which COVID-related impacts are covered by BI policies. Ultimately, any contract disputes over BI coverage are likely to be settled in a court of law.

The insurance industry generally has expressed the view that forcing insurers to cover such claims would potentially redistribute billions of dollars of economic losses caused by COVID-19, and would put too much financial strain on insurers that did not price premiums to reflect virus-related losses, since they included language intended to exclude such losses from policies. They maintain that any attempt retroactively to cover BI policies could make it impossible for insurers to provide affordable coverage in the future. As such disputes may not be settled quickly, various businesses have called for a legislative or regulatory response. Insurers argue that any pandemic insurance solution will require federal involvement.

Several bills related to BI insurance were introduced in the 116th Congress, including H.R. 6494, H.R. 6797, H.R. 7011, and H.R. 7412. In the 117th Congress, Representative Carolyn Maloney reintroduced the Pandemic Risk Insurance Act of 2021 (PRIA), H.R. 5823, on November 2, 2021. Similar to the Terrorism Risk Insurance Act (TRIA), the bill would establish a Pandemic Risk Reinsurance Program within the Department of the Treasury. Insurers would pay claims up front and the government would reimburse a portion of the losses after the fact. Unlike TRIA, participation in PRIA would be voluntary (for further comparison, see CRS Insight IN11511). PRIA would be triggered when aggregate industry-insured losses for participating insurers resulting from a covered public health emergency exceed $250 million. PRIA would also establish a parametric program for non-damage BI losses.

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