



Real Estate & Hospitality

How will Insurance Respond to the Coronavirus (COVID-19)



Gallagher

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COVID-19 has or will affect the real estate and hospitality businesses in the U.S., and could be the basis for lost business income claims. As such, all property owners, operators and managers should know and understand next steps for protecting business assets, and what information should be preserved and prepared in the event that a claim is filed under your property policy.

The primary source of income for all property owners/managers is rental income or business reservations, conventions or meetings as in the case of the hospitality sector. Commercial real estate operates under lease agreements with tenants, and their first concern is how to handle rent defaults. When rent payments aren't made, property owners/managers must determine under what conditions rent could be abated. Moratoriums on evictions will also complicate calculations, but it's important to recognize that a moratorium does not negate the rental contract. When preparing a claim for lost business income from rental failure, adjusters will always request documentation to prove actual loss sustained from a rental income perspective.

On the Hospitality front, room, F&B and convention reservations are the standard to determine projected income. When that income is lost over a national disaster or event like COVID-19, all the facts surrounding the event, and the responses to those events, must be evaluated to see if they impact or support a claim for lost business income.

Most property policies provide that directives from "civil authority" can trigger business income coverage. The coverage typically requires that the civil authority action be taken as a result of an *insured peril*, and it caused direct physical damage to or destruction of the insured's premises in a defined geographic area. Be advised, however, within property policies, losses that relate to a virus or microorganism can be excluded by standard exclusions under the definition of a peril. Pollution policies may offer some expanded coverage but that is intended to remediate assets which have actually been contaminated and the ensuing loss.

The nature and substance of any civil authority directive will also be scrutinized when losses are submitted as a claim as some governmental communications may be phrased as suggestions rather than mandates or directives. When a government official issues a mandate or "suggests" that groups of no more than 250 assemble, take quick action to document all steps taken to follow the mandate. It is of paramount importance that a "Date of Loss" be specifically identified if any claim is filed so that income loss calculations have a firm starting point.

Typically the period of indemnity (or loss calculation) for loss caused by a civil authority mandate is the duration of the civil authority mandate period. The policies typically limit civil authority to ninety (90) days, and the direct physical loss or damage that causes the civil authority mandate would need to occur within 5 miles of the affected premises.

This is an evolving risk that Gallagher continues to monitor through the CDC and the WHO.

Please visit:
ajg.com/us/pandemic-preparedness for the latest information.



Also, please note that some businesses have historically attempted to obtain claim coverage for the impact of a tenant default under property insurance. This exposure is excluded under ISO and manuscript forms because it is considered a credit risk that does not have the trigger of direct physical damage by an insured peril.

Simply stated, the vast majority of property contracts contain exclusions for losses associated with viruses. Likewise, those same property policies have a requirement of direct damage (or contingent business interruption) to an insured location or operation to qualify as a loss to an insured peril. In recent days, a number of state legislatures, as well as the Federal government, are considering options to extend business interruption coverage for losses based on business interruptions due to COVID-19. This is literally changing by the hour.

We urge all clients who have or will continue to suffer an economic loss based on COVID-19 shut downs/closures, to prepare loss summaries to support claims. Be sure to detail the actual loss sustained by your business, and submit them to property and environmental carriers in support of claims. This process will protect future rights of recovery even if denials are currently issued by carriers. Having a solid record of your loss/claim submission will support you in the event state courts/legislatures determine that coverage should be afforded for business interruption costs associated with COVID-19.

INSURANCE POLICIES THAT MAY PROVIDE COVERAGE FOR COVID-19 LOSSES

While specific policies for business losses that result from a pandemic are uncommon, always check with your insurance broker to discuss what key coverages might respond for your particular losses.

Gallagher has multiple industry and practice area specialists who have prepared commentary on insurance policies that could respond to particular losses that arise from COVID-19.

Please check here for more detail and analysis.

ajg.com/us/pandemic-preparedness/

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