

# PUBLICATION

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## Coronavirus: Implications for Business Interruption Insurance Coverage

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**Bars and restaurants are closing. Airline travel is discouraged. Supply chains are interrupted. Hotels and motels are empty. Because of its impact on every segment of the economy, the coronavirus (COVID-19) pandemic undoubtedly will spawn coverage disputes and litigation over the availability of insurance coverage for resulting economic loss. With regard to business interruption coverage, two issues likely will be front and center.**

First, business interruption coverage provided by a commercial property policy typically is triggered by "direct physical loss of or damage to property at premises which are described in the Declarations." The courts that have addressed whether the mere presence of a contaminant in a structure satisfies this requirement have reached varying results. The law in each jurisdiction and the facts involved in each case, including the specific policy language in question, ultimately will determine this issue. *See, e.g., Mama Jo's Inc. v. Sparta Ins. Co.*, 2018 LEXIS 201852 (S.D. Fla. June 11, 2018) (no trigger); *Gregory Packaging v. Travelers Prop. & Cas. Co. of America*, 2014 LEXIS 165232 (D. N.J. Nov. 25, 2014) (trigger); *Great N. Ins. Co. v. Benjamin Franklin Fed. Sav. & Loan Ass'n*, 793 F. Supp. 259 (D. Or. 1990) (no trigger); *Universal Image Prods. v. Chubb Corp.*, 703 F. Supp. 2d 705 (E.D. Mich. 2010) (no trigger).

Second, many business interruption policy forms exclude "Loss Due to Virus Or Bacteria." Indeed, the widely used Insurance Services Office (ISO) form CP 01 40 07 06 excludes "loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease." The exclusion specifically states that it applies to business interruption coverage. Therefore, even in jurisdictions in which the presence of COVID-19 satisfies the "direct physical loss of or damage to" mandate, coverage for business interruption loss may be excluded from coverage if not added by endorsement. And, resourceful lawyers representing insureds will burn the midnight oil to develop novel ways to negate the exclusion.

If business interruption coverage is not available, other coverages may be. For example, "civil authority" coverage typically responds when a federal, state or local government order prohibits an insured's access to its property. The availability of this coverage will vary among policy forms and jurisdictions and may or may not require proof that the order was predicated on "physical damage" to property. Compare *United Air Lines, Inc. v. Ins. Co. of State of Penn.*, 439 F. 2d 128 (2d Cir. 2006) (no coverage if shutdown based on fear of damage); with *Sloan v. Hartford Ins. Co.*, 207 N.W. 2d 434 (1973) (coverage for loss caused by curfew). Again, specific policy terms will control.

In addition, a policy may provide "contingent business interruption" coverage, which typically provides coverage for economic loss caused by damage to the property of a key supplier. Policy terms may limit coverage to damage to the property of a direct supplier or may include damage to the property of suppliers of suppliers. Who is and is not a "supplier" as defined by the policy often will be the determinative coverage issue. *See, e.g., Pentair, Inc. v. American Guar. & Liab. Ins. Co.*, 400 F. 3d 613 (8<sup>th</sup> Cir. 2005) (electrical substation not a "supplier of goods and services"); *Millennium Inorganic Chem. Ltd. v. Nat'l Union Fire Ins. Co.*, 744 F. 3d 279 (4<sup>th</sup> Cir. 2014) (supplier of natural gas without contractual privity with insured not a "direct supplier").

If you have any questions regarding these or other coverage issues related to losses caused directly or indirectly by the coronavirus, please contact the Baker Donelson coverage counsel with whom you deal on a regular basis. Also, please visit the [Coronavirus \(COVID-19\): What you Need to Know information](#) page on our website.