


# Coronavirus (COVID-19): Does Business Income Respond?

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## Today's Topics

- Business Income Coverage for Coronavirus (COVID-19)
- Civil Authority
- Dependent Property (Supply Chain)
- Government Intervention



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## Business Income Coverage



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## Business Income Insuring Agreement

We will pay for the actual loss of Business Income you sustain due to the **necessary "suspension"** of your "operations" during the "period of restoration". The "suspension" **must** be caused by **direct physical loss of or damage to property** at premises which are described in the Declarations and for which a Business Income Limit Of Insurance is shown in the Declarations. The loss or damage must be caused by or **result from a Covered Cause of Loss**.

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## Can a Virus Cause Property Damage

- Damage requires physical harm generally evidenced by changes in the physical characteristics that require repair.
- The presence of a virus on a surface or in the air does not change the physical characteristics such that repair is required.
- There is no property damage.
- Without property damage, business income coverage does not respond.

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## Exclusion in the Unendorsed Policy

- Business Income policy written on a Special Form excludes:  
*L. Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss".*
- A "pollutant" is: *"any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste"*
- A biological "contaminant" is a contamination of food or environment with micro organisms such as bacteria, **VIRUSES**, fungi or parasites.

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## Grasping at ANY Possibility of Coverage

- **Gregory Packaging, Inc. v. Travelers Prop. Cas. Co. of Am.**
  - Ammonia released into the building judged as property damage.
  - Business closed more than a week to air out premises and BI policy required to respond.
- Similar cases with different outcomes: Mama Jo's, Inc. v. Sparta Ins. Co.; Mastellone v. Lightning Rod Mut. Ins. Co.; Universal Image Prods. v. Chubb Corp.; Great N. Ins. Co. v. Benjamin Franklin Fed. Sav. & Loan Ass'n.

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## IF Considered Property Damage...

- How long will the "damage" be present?
  - Can be disinfected in one day.
  - If not taken care of by owner – the virus can live for only a short time:
    - Up to 4 hours in the air.
    - 1 to 3 days on surfaces – depending on the surface
- Most Business Income policies have a 72-hour "deductible."

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## CP 01 40 – Removing All Doubt

- ISO Released the *CP 01 40-Exclusion of Loss Due to Virus or Bacteria* in 2006
- Specifically excludes loss resulting from a Virus
- ISO stated in the filing that the presence of viruses was NEVER intended to be covered due to the pollution exclusion.
- ISO introduced this this endorsement to negate "efforts to expand coverage and to create sources of recovery for such losses, contrary to policy intent." According to ISO, this is a mandatory form.
- Some agents are using this unethically!

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## Business Income – No Coverage

- There is no property damage – thus there is no coverage.
- If courts disagree about property damage AND ignore the pollution exclusion, what is the period of damage? According to scientist, a maximum of 3 days without human intervention. (Remember, 72-hour deductible.)
- If CP 01 40 attached, there is no question.
- Overall, there is no Business Income Coverage.

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## Civil Authority: An Additional Coverage

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## Policy Requirements

**a. Civil Authority**  
In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations.

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain...caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority Coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began and will end:

- (1) Four consecutive weeks after the date of that action; or
- (2) When your Civil Authority Coverage for Business Income ends, whichever is later.

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## Policy Requirements

- Must be a covered "cause of loss." Excluded by either the pollution exclusion or the CP 01 40.
- Access to the area must be prohibited. You can still get into the area you just can't go into the building (maybe).
- Must have been property damage within 1 mile of insured's premises.
- The civil authority must prohibit access due to dangerous physical conditions. Is it the property or the people that might lead to a civil authority decree?
- 72-Hour "deductible"
- **No coverage!**

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## Dependent Property

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## Dependent Properties

- Buyers (Recipient Locations) – Can be international
- Suppliers (Contributing Locations) – Can be international
- Providers (Manufacturing Locations)
- **Drivers (Leader Locations)**

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## Endorsement Language

A. We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by **direct physical loss of or damage to "dependent property"** at the premises described in the Schedule caused by or resulting from a **Covered Cause of Loss**.

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## Dependent Property and BI

- Same limitations as is found in the business income coverage.
  - Direct physical loss or damage
  - Covered cause of loss
- Same answer:

**No Coverage!**

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## Government Intervention

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## States Involving Themselves

- New York and New Jersey have responded to business income coverage:
  - New Jersey: Proposing a bill that would require every insurance policy that provides business income coverage to pay for business income lost due to COVID-19.
  - New York: Requiring every insurance carrier to communicate with every policyholder with a business income policy and explain if they have coverage for the event and to what extent.

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## Ultimate Result

- In NJ and NY, I don't yet.
- Will other states seek to intervene? Who knows??

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## Moral of the Story

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### What is the Moral of the Story

In the business income policy, with or without the CP 01 40, there is no coverage – unless:

- Courts ignore the meaning and reality of property damage;
- Courts ignore the pollution exclusion (in the absence of the CP 01 40); or
- Governmental authorities intervene.

• Even if coverage is found – there is generally a 72-hour deductible. The virus doesn't live on surfaces beyond that amount of time.

• In reality, is it the property or the people that is the problem?

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