

# **Is there Business Interruption/Loss of Income Coverage for COVID-19 Damages?**

**An examination of business interruption coverage, lawsuits around the country, arguments for and against coverage, and pending legislation.**

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Debbie Sines Crockett  
Cheffy Passidomo, P.A.  
4100 W. Kennedy Blvd., Suite 335  
Tampa, FL 33609  
813-225-2684  
[DSCrockett@NaplesLaw.com](mailto:DSCrockett@NaplesLaw.com)

### Businessowner's Coverage Part/Form

- BP 00 03 01 06

### Commercial Inland Marine

- CM 00 01 09 04
- Covers any property that is movable, transportable, or involved in transferring information (computer equipment and your “stuff”)

### Commercial Property Coverage

- CP 00 10 06 07
- Building and Personal Property Coverage

## FIRST PARTY

Your Own Insurance Company Pays You, the Policyholder.

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# Typical Coverage Grant

## SECTION I – PROPERTY

### A. Coverage

We will pay for **direct physical loss of or damage** to Covered Property at the premises described in the Declarations **caused by or resulting from any Covered Cause of Loss.**

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# Business Income / Business Interruption

## Section I – Property

### 5. Additional Coverages

<p>f. Business Income</p> <p>(1) Business Income</p> <p>(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 property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of the site at which the described premises are located. With respect to the requirements set forth in Paragraph (a) above, if you occupy only part of the site at which the described premises are located, your premises means:</p> <ul style="list-style-type: none"><li>(i) The portion of the building which you rent, lease or occupy, and</li><li>(ii) Any area within the building or on the site at which the described premises are located, if that area services, or is used to gain access to, the described premises.</li></ul> <p>(b) We will only pay for loss of Business Income that you sustain during the "period of restoration" and that occurs within 12 consecutive months after the date of direct physical loss or damage. We will only pay for ordinary payroll expenses for 60 days following the date of direct physical loss or damage, unless a greater number of days is shown in the Declarations.</p> <p>(c) Business Income means the:</p> <ul style="list-style-type: none"><li>(i) Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses; and</li></ul>	<p>(ii) Continuing normal operating expenses incurred, including payroll.</p> <p>(d) Ordinary payroll expenses:</p> <ul style="list-style-type: none"><li>(i) Mean payroll expenses for all your employees except:<ul style="list-style-type: none"><li>i. Officers;</li><li>ii. Executives;</li><li>iii. Department Managers;</li><li>iv. Employees under contract; and</li><li>v. Additional Exemptions shown in the Declarations as:<ul style="list-style-type: none"><li>• Job Classifications; or</li><li>• Employees.</li></ul></li></ul></li><li>(ii) Include:<ul style="list-style-type: none"><li>i. Payroll;</li><li>ii. Employee benefits, if directly related to payroll;</li><li>iii. FICA payments you pay;</li><li>iv. Union dues you pay; and</li><li>v. Workers' compensation premiums.</li></ul></li></ul>
	<p>(2) Extended Business Income</p> <p>(a) If the necessary suspension of your "operations" produces a Business Interruption payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:</p> <ul style="list-style-type: none"><li>(i) Begins on the date property expected finished stock is actually repaired, rebuilt or replaced and "operations" are resumed; and</li><li>(ii) Ends on the earlier of:<ul style="list-style-type: none"><li>i. The date you could restore your "operations", with reasonable speed, to the level which would generate the Business Income amount that would have existed if no direct physical loss or damage had occurred; or</li><li>ii. 30 consecutive days after the date determined in Paragraph (a)(i) above, unless a greater number of consecutive days is shown in the Declarations.</li></ul></li></ul>

- 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 the described premises.
- The loss or damage must be caused by or result from a Covered Cause of Loss.

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“The suspension must be caused by direct physical loss of or damage to property at the described premises”

The loss or damage must be caused by or result from a Covered Cause of Loss

What constitutes  
‘direct physical loss of or damage’ to  
property at the  
[insured] premises?

Is viral  
contamination a  
‘covered cause of  
loss’?



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N.Y. 10007

EMERGENCY EXECUTIVE ORDER NO. 100

March 16, 2020

EMERGENCY EXECUTIVE ORDER

WHEREAS, this order is given because of the propensity of the virus to spread person to person and also because the virus physically is causing property loss and damage; and

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# **EXECUTIVE ORDER OF THE HILLSBOROUGH COUNTY EMERGENCY POLICY GROUP SAFER-AT-HOME ORDER IN RESPONSE TO A COUNTY WIDE THREAT FROM THE COVID-19 VIRUS**

**WHEREAS**, there is reason to believe that COVID-19 is spread amongst the population by various means of exposure, including the propensity to spread person to person and the propensity to attach to surfaces for prolonged periods of time thereby creating a dangerous physical condition spreading from surface to person and causing increased infections to persons, and also creating property or business income loss and damage in certain circumstances; and

**WHEREAS**, this Executive Order is being issued because of the propensity of COVID-19 to spread from person to person causing widespread infection and loss of life, and also because COVID-19 is causing property damage and business income loss due to its proclivity to attach to surfaces for prolonged periods of time and thereby creating a dangerous physical condition; and

**WHEREAS**, as a governmental civil authority action, it is necessary to impose the regulations and restrictions set forth herein in response to the dangerous physical conditions that currently exists and to stop the COVID-19 virus from spreading; and

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**CITY OF KEY WEST  
STATE OF LOCAL EMERGENCY DIRECTIVE 2020-03**

WHEREAS, there is reason to believe that COVID-19 is spread amongst the population by various means of exposure, including the propensity to spread person to person and the propensity to attach to surfaces for prolonged periods of time, thereby spreading from surface to person and causing property loss and damage in certain circumstances; and

WHEREAS, this order is given because of the propensity of the virus to spread person to person and because the virus physically is causing property damage due to its proclivity to attach to surfaces for prolonged periods of time; and

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# **BROWARD COUNTY ADMINISTRATOR'S EMERGENCY ORDER 20-01**

**WHEREAS**, this Emergency Order is necessary because of the propensity of the virus to spread person to person and also because the virus is physically causing property damage due to its proclivity to attach to surfaces for prolonged periods of time;

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GROVER C. ROBINSON, IV  
Mayor

CITY OF PENSACOLA

**DECLARATION OF STATE OF EMERGENCY 20-01**

**WHEREAS**, the COVID-19 virus has the propensity to spread from person to person through direct physical contact and through the air; and

**WHEREAS**, the COVID-19 virus has the propensity to attach to surfaces for prolonged periods of time, thus causing property damage and continuing the spread of the virus.

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# Civil Authority Coverage

- We will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises due to direct physical loss of or damage to property, ***other than*** at the described premises, caused by or resulting from any Covered Cause of Loss. The coverage for Business Income will begin 72 hours after the time of that action and will apply for a period of up to three consecutive weeks after coverage begins. The coverage for necessary Extra Expense will begin immediately after the time of that action and ends:
  - (1) 3 consecutive weeks after the time of that action; or
  - (2) When your Business Income coverage ends;
  - whichever is later.
- The definitions of Business Income and Extra Expense contained in the Business Income and Extra Expense Additional Coverages also apply to this Civil Authority Additional Coverage. The Civil Authority Additional Coverage is not subject to the Limits of Insurance of Section I – Property.

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# EXCLUSIONS

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COMMERCIAL PROPERTY  
CP 01 40 07 06

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
STANDARD PROPERTY POLICY

- A. The exclusion set forth in Paragraph B. applies to all coverage under all forms and endorsements that comprise this Coverage Part or Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.
- B. We will not pay for loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease.  
However, this exclusion does not apply to loss or damage caused by or resulting from "fungus", wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.
- C. With respect to any loss or damage subject to the exclusion in Paragraph B., such exclusion supersedes any exclusion relating to "pollutants".
- D. The following provisions in this Coverage Part or Policy are hereby amended to remove reference to bacteria:
  1. Exclusion of "Fungus", Wet Rot, Dry Rot And Bacteria; and
  2. Additional Coverage - Limited Coverage for "Fungus", Wet Rot, Dry Rot And Bacteria, including any endorsement increasing the scope or amount of coverage.
- E. The terms of the exclusion in Paragraph B., or the inapplicability of this exclusion to a particular loss, do not serve to create coverage for any loss that would otherwise be excluded under this Coverage Part or Policy.

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COMMERCIAL PROPERTY  
CP 01 75 07 06

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
STANDARD PROPERTY POLICY

- A. The exclusion set forth in Paragraph B. applies to all coverage under all forms and endorsements that comprise this Coverage Part or Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority
- B. We will not pay for loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease.
- C. With respect to any loss or damage subject to the exclusion in Paragraph B., such exclusion supersedes any exclusion relating to "pollutants".
- D. The terms of the exclusion in Paragraph B., or the inapplicability of this exclusion to a particular loss, do not serve to create coverage for any loss that would otherwise be excluded under this Coverage Part or Policy.

However, this exclusion does not apply to loss or damage caused by or resulting from fungus. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.

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ISO Circular  
7/6/2006

## Introduction

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The current pollution exclusion in property policies encompasses contamination (in fact, uses the term *contaminant* in addition to other terminology). Although the pollution exclusion addresses contamination broadly, viral and bacterial contamination are specific types that appear to warrant particular attention at this point in time.

An example of bacterial contamination of a product is the growth of listeria bacteria in milk. In this example, bacteria develop and multiply due in part to inherent qualities in the property itself. Some other examples of viral and bacterial contaminants are **rotavirus, SARS, influenza** (such as avian flu), **legionella** and **anthrax**. The universe of disease-causing organisms is always in evolution.

**Disease-causing agents** may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and **business interruption (time element) losses**.



ISO Circular  
7/6/2006

## Current Concerns

Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case. In addition, pollution exclusions are at times narrowly applied by certain courts. In recent years, ISO has filed exclusions to address specific exposures relating to contaminating or harmful substances. Examples are the mold exclusion in property and liability policies and the liability exclusion addressing silica dust. Such exclusions enable elaboration of the specific exposure and thereby can reduce the likelihood of claim disputes and litigation.

While property policies have not been a source of recovery for losses involving contamination by disease-causing agents, the specter of pandemic or hitherto unorthodox transmission of infectious material raises the concern that insurers employing such policies may face claims in which there are efforts to expand coverage and to create sources of recovery for such losses, contrary to policy intent.

In light of these concerns, we are presenting an exclusion relating to contamination by disease-causing viruses or bacteria or other disease-causing microorganisms.

BUSINESS OWNERS  
BP 06 01 01 07

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA**

This endorsement modifies insurance provided under the following:

### **BUSINESS OWNERS COVERAGE FORM**

- A. The exclusion set forth in Paragraph B. applies to all coverage under Section I – Property in all forms and endorsements that comprise this Businessowners Policy, except as provided in Paragraph C. This includes but is not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.
- B. We will not pay for loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease.
- C. However, the exclusion in Paragraph B. does not apply to the following:
  - 1. Loss or damage caused by or resulting from "fungi", wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Businessowners Policy; or
  - 2. Coverage otherwise provided under Food Contamination Endorsement BP 04 31 (if that endorsement is attached to this Businessowners Policy); or
- 3. Coverage otherwise provided under the Food Contamination Additional Coverage in Restaurants Endorsement BP 07 78 (if that endorsement is attached to this Businessowners Policy).
- D. With respect to any loss or damage subject to the exclusion in Paragraph B., such exclusion supersedes any exclusion relating to "pollutants".
- E. The following provisions in this Businessowners Policy are hereby amended to remove reference to bacteria:
  - 1. Exclusion of "Fungi", Wet Rot, Dry Rot And Bacteria; and
  - 2. Additional Coverage – Limited Coverage For "Fungi", Wet Rot, Dry Rot And Bacteria, including any endorsement increasing the scope or amount of coverage.
- F. The terms of the exclusion in Paragraph B., or the inapplicability of this exclusion to a particular loss, do not serve to create coverage for any loss that would otherwise be excluded under this Businessowners Policy.

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## VIRUS OR BACTERIA EXCLUSION

### DEFINITIONS

#### Definitions Amended --

When "fungus" is a defined "term", the definition of "fungus" is amended to delete reference to a bacterium.

When "fungus or related perils" is a defined "term", the definition of "fungus or related perils" is amended to delete reference to a bacterium.

### PERILS EXCLUDED

The additional exclusion set forth below applies to all coverages, coverage extensions, supplemental coverages, optional coverages, and endorsements that are provided by the policy to which this endorsement is attached, including, but not limited to, those that provide coverage for property, earnings, extra expense, or interruption by civil authority.

1. The following exclusion is added under Perils Excluded, item 1.:

#### Virus or Bacteria --

"We" do not pay for loss, cost, or expense caused by, resulting from, or relating to any virus, bacterium, or other microorganism that causes disease, illness, or physical distress or that is capable of causing disease, illness, or physical distress.

This exclusion applies to, but is not limited to, any loss, cost, or expense as a result of:

- a. any contamination by any virus, bacterium, or other microorganism; or
- b. any denial of access to property because of any virus, bacterium, or other microorganism.

2. **Superseded Exclusions** -- The Virus or Bacteria exclusion set forth by this endorsement supersedes the "terms" of any other exclusions referring to "pollutants" or to contamination with respect to any loss, cost, or expense caused by, resulting from, or relating to any virus, bacterium, or other microorganism that causes disease, illness, or physical distress or that is capable of causing disease, illness, or physical distress.

### OTHER CONDITIONS

#### Other Terms Remain in Effect --

The "terms" of this endorsement, whether or not applicable to any loss, cost, or expense, cannot be construed to provide coverage for a loss, cost, or expense that would otherwise be excluded under the policy to which this endorsement is attached.

# **True or False?**

**The mere presence of a virus:**

**That attaches to property or physically affects property renders that property uninhabitable or unfit for its intended use?**

**Constitutes  
“direct physical loss of or damage to property  
at the premises”?**

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## "Pollution Exclusion" & Notable Cases

- **Mama Jo's, Inc. v. Sparta Ins. Co.**, 17-CV-23362, 2018 WL 3412974 (S.D. Fla. Jun 11, 2018) (restaurant did not sustain direct physical loss when dust and debris from nearby roadwork could be remediated by cleaning)
  - **"A direct physical loss "contemplates an actual change in insured property then in a satisfactory state, occasioned by accident or other fortuitous event directly upon the property causing it to become unsatisfactory for future use or requiring that repairs be made to make it so."** *MRI Healthcare Ctr. of Glendale, Inc. v. State Farm Gen. Ins. Co.*, 187 Cal. App. 4th 766, 779 (2010); see also *AFLAC Inc. v. Chubb & Sons, Inc.*, 260 Ga. App. 306, 308, (2003).
- *Port Auth. of New York & New Jersey v. Affiliated FM Ins. Co.*, 311 F.3d 226, 236 (3d Cir. 2002) ("When the presence of large quantities of **asbestos in the air of a building** is such as to make the structure **uninhabitable and unusable**, then there has been a distinct loss to its owner.")
- *Morton Inter'l Inc. v. General Accident Ins. Co.*, 629 A.2d 831 (N.J. 1993)
- *St. Paul Fire Ins. Co. v. McCormick & Baxter Creosoting Co.* 923 P.2d 1200 (Or. 1996)
- *Gregory Packaging, Inc. v. Travelers Prop. and Casualty Co. of Am.*, 2014 U.S. Dist. LEXIS 165232 (D.N.J. Nov. 25, 2014) (a property can sustain physical loss or damage without experiencing structural alteration. Ammonia, a dangerous gas, which rendered Gregory Packaging's **buildings uninhabitable, constituted a "direct physical loss,"** sufficient to trigger coverage under the Travelers' policy.)
- *Universal Image Prods. v. Chubb Corp.*, 703 F. Supp. 2d 705 (E.D. Mich. 2010) (holding that intangible harms such as odors or the presence of mold and **bacteria in an HVAC system did not constitute physical damage to property**)
- *Great N. Ins. Co. v. Benjamin Franklin Fed. Sav. & Loan Ass'n*, 793 F. Supp. 259 (D. Or. 1990) (opining that **asbestos contamination was not a physical loss**, as the building remained unchanged), *aff'd*, 953 F.2d 1387 (9th Cir. 1992).

35. Plaintiffs also seek a Declaratory Judgment to determine whether the Governor's March 13, 2020 Order and the Mayor's March 15, 2020 restrictions trigger the civil authority provision of the policy issued to the plaintiffs.

36. Plaintiffs ask the Court to affirm that because the policy provided by Lloyd's does not contain an exclusion for a viral pandemic, the policy provides coverage to plaintiffs for any future civil authority shutdowns of restaurants in the New Orleans area due to physical loss from Coronavirus contamination and that the policy provides business income coverage in the event that the coronavirus has contaminated the insured premises.

37. Plaintiffs do not seek any determination of whether the Coronavirus is physically in the insured premises, amount of damages, or any other remedy besides the declaratory relief.

*Cajun Conti, LLC dba Ocean Grill v. Certain Underwriters at Lloyd's London*  
Filed 3/16/20 Orleans Parish, LA District Court 2020-02558

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WHEREFORE, the Nation seeks a declaratory judgment from this Court declaring the policies cover the Nation's losses and expenses related to the COVID-19 pandemic and infection and the Defendant Insurers are responsible for said losses and expenses and such further relief which may be appropriate.

*Chickasaw Nation Dept. of Commerce v. Lexington Ins. Co., et al.*  
Filed 3/24/20 Pontotoc County, OK District Court, CV-20-35

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- 1) For a declaration that the Order by Karen Relucio, in her official capacity, constitutes a prohibition of access to plaintiffs' Insured Premises.
- 2) For a declaration that the prohibition of access by the Order is specifically prohibited access as defined in the Policy.
- 3) For a declaration that the Order triggers coverage because the policy does not include an exclusion for a viral pandemic and actually extends coverage for loss or damage due to virus.
- 4) For a declaration that the policy provides coverage to plaintiffs for any current and future civil authority closures of restaurants in Napa County due to physical loss or damage from the Coronavirus under the Civil Authority coverage parameters and the policy provides business income coverage in the event that Coronavirus has caused a loss or damage at the insured premises or immediate area of the insured premises.
- 5) For such other relief as the Court may deem proper.

*French Laundry Partners, LP v. The Hartford Fire Ins., et al.*  
Filed 3/25/20 Napa County, CA Superior Court

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45. Plaintiffs seek a judicial declaration as to their rights and Defendant's obligations under the Package Policy and Marine Policy, confirming: (a) Defendant has a duty to pay Plaintiffs' property and business income losses, as described above; (b) Defendant cannot rely on the "direct physical loss" requirement to avoid coverage; and (c) Defendant cannot rely on a purported virus exclusion to avoid coverage.

*Moda LLC v. The Hartford Fire Ins. Co.*

Filed 4/3/20 Los Angeles County, CA Superior Court, 20PSCV00256

# What are the States Doing?

- **New York** Assembly Bill A10226 3/27/20 “An Act in relation to requiring certain perils be covered under business interruption insurance during the coronavirus disease 2019 (COVID-19) pandemic”
- **Massachusetts**: SB 2888 3/24/20 “An Act concerning business interruption insurance.... *Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to require certain insurance companies in the commonwealth to provide business interruption insurance coverage to their insured in connection with the COVID-19 pandemic...”
- **Ohio**: HB 589 “A Bill to require insurers offering business interruption insurance to cover losses attributable to viruses and pandemics and to declare an emergency.”
- **New Jersey**: Assembly Bill A3844 3/16/20 “An Act concerning certain covered perils under business interruption insurance... This bill provides a mechanism by which certain businesses that suffer losses due to interruption as a result of the coronavirus disease 2019 pandemic may recover those losses from their insurer if they had a policy of business interruption insurance in force on March 9, 2020, the date on which the Governor declared a Public Health Emergency and State of Emergency in Executive Order 103. The bill would apply to businesses covered by such a policy with less than 100 eligible employees in the State....”
- **CT**
- **FL????????????????????????**

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# What's the Fed Doing?

- A bipartisan group of U.S. House members has asked insurers to retroactively recognize financial losses relating to COVID-19 under commercial business interruption coverage for policyholders.
- Eighteen House members made their case in a **March 18 letter** addressed to the leaders of the American Property Casualty Insurance Association, the National Association of Mutual Insurance Companies, the Independent Insurance Agents & Brokers of America, and the Council of Insurance Agents and Brokers.
- “During times of crisis, we must all work together,” the letter from the congressional representatives states. “We urge you to work with your member companies and brokers to recognize financial loss due to COVID-19 as part of policyholders’ business interruption coverage.”
- House Democrats who signed: Nydia Velazquez, N.Y.; Andy Kim, N.J. (who is self-quarantined due to contact with someone positive); Grace Napolitano, Calif.; Marc Veasey, Texas; **Alcee Hastings, Fla.**; Rashida Tlaib, Mich.; Gilbert Cisneros, Calif.; Scott Peters, Calif.; Max Rose, N.Y.; Kathleen Rice, N.Y.; Joe Cunningham, S.C.; and Andy Levin, Mich.
- House Republicans who signed: Brian Fitzpatrick, Pa.; Jim Hagedorn, Minn.; French Hill, Ark.; Rick Crawford, Ark.; Steve Womack, Ark; and Bruce Westerman, Ark.
- The letter argues that American businesses are “understandably concerned about the potential financial impact the continued global spread of COVID-19 may have on their operations” in the wake of more than 118,000 declared cases of the disease in 114 countries globally, with more than 4,000 people having lost their lives so far. As a result, they argue that including COVID-19 related losses in business interruption coverage is key.
- <https://www.insurancejournal.com/news/national/2020/03/20/561810.htm>

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# What's the Insurance Industry Doing?

- The insurance industry leaders responded in no uncertain terms, saying: "**Business interruption policies do not, and were not designed to, provide coverage against communicable diseases such as COVID-19.**"
- "The U.S. insurance industry remains committed to our consumers and will ensure that prompt payments are made in instances where coverage exists," they added.
- In their response, the trade group leaders noted that member insurers have been active in **charitable efforts** in their communities and have begun working with customers to offer flexibility on premium payments.
- "We recognize the extraordinary challenges our country is facing—our member businesses, our employees, and our families are confronting the same trials," the trade group letter said, concluding, however, that **government action is needed to address growing problems.**
- "The U.S. is in the midst of a national crisis that will require **federal assistance** that provides funding directly to those American individuals and businesses most in need. Our organizations stand ready to work with Congress on solutions that provide the necessary relief as soon as possible," the letter said.
- <https://www.insurancejournal.com/news/national/2020/03/20/561810.htm>

# The Insurance Industry & The Feds

## Pandemic Risk Insurance Act of 2020

- Proposed legislation, led by Congresswoman Maxine Waters
- The bill would require insurers to provide protection against lost and interrupted business due to COVID19.
- Caps the total amount insurers would have to pay out.
- Administered by the Treasury Dept., the program = reinsurer for insurers.
- Insurers that participate in the program will be charged an annual premium for reinsurance coverage, “based on the actuarial cost of providing such reinsurance coverage, including costs of administering the program,” the bill states.
- In return for a federal backstop on pandemic losses, insurers would agree to make available business interruption insurance coverage for insured losses that does not “differ materially from the terms, amounts and other coverage limitations applicable to losses arising from events other than public health emergencies,” the bill states.
- <https://www.businessinsurance.com/article/20200409/NEWS06/912333968/Pandemic-Risk-Insurance-Act-business-interruption-backstop>
- <https://www.cnn.com/this-coronavirus-insurance-bill-could-crash-the-u-s-stock-market/>

# The Insurance Industry & The Feds

## Pandemic Risk Insurance Act of 2020

- Terrorism Risk Insurance Act, the total amount insurers have to pay out against a terrorist act is capped at \$100 billion per year.
  - For every \$100 billion, insurers pay 20% of their direct earned premiums as a deductible. They then have to pay 20% of the remaining amount in excess of this deductible. The government will then pay the rest.
- It's not clear what the limits would be for the Pandemic Risk Insurance Act, but they would likely have to be larger to meet the scale of the coming coronavirus depression.
- For the sake of comparison, the 9/11 terrorist attacks resulted in insured losses of \$32.5 billion. By contrast, the U.S. marketing industry alone will lose around \$26 billion as a result of the coronavirus. Some investors predict that U.S. corporations will lose \$4 trillion overall.

  

- <https://www.businessinsurance.com/article/20200409/NEWS06/912333968/Pandemic-Risk-Insurance-Act-business-interruption-backstop>
- <https://www.cnn.com/this-coronavirus-insurance-bill-could-crash-the-u-s-stock-market/>

# **The Bottom Line (as of 4/20/20)**

- 1)RFP**
- 2)Make the claim**
- 3)Don't take no for an answer; there *may be* coverage!**

**Debbie Sines Crockett**  
**Cheffy Passidomo, P.A.**  
4100 W. Kennedy Blvd., Suite 335  
Tampa, FL 33609  
813-225-2684  
[DSCrockett@NaplesLaw.com](mailto:DSCrockett@NaplesLaw.com)

**CHEFFY PASSIDOMO**  
ATTORNEYS AT LAW