

## **Business Interruption Insurance and Coronavirus**

Dear World Floor Covering Association Member,

It is recommended that flooring retailers and contractors file a claim for business interruption insurance if they have such coverage. While insurance carriers are likely to dispute coverage of this loss, it is important to have the claim on file and not simply accept an initial denial of coverage.

### **Damage to Property**

Business interruption insurance is typically purchased as part of a company's commercial property insurance policy, but can be a stand-alone policy. In many commercial property insurance policies, business interruption coverage is triggered when the policyholder sustains "direct physical loss of or damage to" insured property. In the event of a claim for coronavirus-related business interruption the issue is whether this "physical loss" requirement has been met. Arguably the Coronavirus, which causes the disease COVID-19, creates a physical loss because it infects and stays on the surface of objects or materials up to twenty-eight days.

Courts across the country have not settled upon a uniform rule for when insured property has suffered a "physical loss." Courts in a number of jurisdictions have determined that contamination and other incidents that render property uninhabitable or otherwise unfit for its intended use constitutes a "physical loss" sufficient to trigger business interruption coverage. This does not ensure coverage. In recent years, particularly in the aftermath of the SARS epidemic, many insurers added specific exclusions for bacterial or viral infections to their coverage.

### **Civil Authority Actions**

In addition, many commercial property insurance policies provide coverage for business income losses sustained when a "civil authority" prohibits or impairs access to the policyholder's premises. An order by federal, state, or local authorities that limits access to a business may trigger this coverage. A "shelter in place" order may be the clearest action by a "civil authority", but other orders that limit the number of people that can gather or limit operational hours also arguably impairs access to a flooring retailer or contractor's facilities. Accordingly, in the event that a federal, state, or local governmental authority issues orders limiting or prohibiting access to a store or facility, there may be coverage under a business interruption policy.

An insurance carrier may contend, and some courts have agreed, that coverage is only available if the civil authority action prevents access to property as a result of physical damage, like unsafe conditions from a hurricane or fire to the business's buildings or adjacent structures. It is also unclear whether a policy that excludes bacterial or viral infections would override coverage if a "civil authority" prohibits or impairs access to a store or facility.

### **File a Claim**

The bottom line is coverage will depend on the language in the policy and how each state court has interpreted that language. A flooring retailer and contractor should not just accept the denial of coverage. Rather, file a claim. Many policies have time limits on when a claim must be filed and a business does not want to miss the deadline. The flooring retailer and contractor should also and work with their broker to review the policies to see if a you can fit within the coverage.

In other words, do not take no for an answer. There will be, and in fact there already has been, lawsuits over whether business interruption insurance covers losses from Coronavirus. The results of these case will impact whether a flooring retailer or contractor has coverage, but you need to have a claim already filed.

WFCA will keep members informed of developments. In the meantime, communicate your needs to us ASAP so that we can pass them along to legislators and agencies as these relief packages are negotiated. The time to engage is now. Please send any suggestions to [shumphrey@wfca.org](mailto:shumphrey@wfca.org) and [fstaten@wfca.org](mailto:fstaten@wfca.org).