

[Business Interruption & Pandemics]

[Regulator Insight]

The CIPR Research Library has compiled a summary of recent academic articles, news coverage and state communications about the limitations of business interruption insurance during the COVID-19 pandemic and government, legal, and state/industry responses. The Library's *Regulator Insights* series is aimed at assisting state insurance regulators in quickly understanding the breadth and depth of recent information produced on a key topic of interest across media and other sources.

Why this Topic is Important



The COVID-19 pandemic forced the closure of businesses around the world throughout the course of 2020. An [October 2020 survey](#) found that over three-quarters of U.S. small businesses lost revenue due to the pandemic with losses averaging 30%. An additional 37% reported having to lay off or furlough staff. Business interruption (BI) insurance is intended to help keep small businesses afloat in case of a temporary closure. However, only about [40% of small businesses](#) purchase BI coverage and many of those policies have pandemic or virus exclusions.

Pandemic exclusions are common due to the systemic nature of the risk; insurance is not generally intended to cover such widespread losses. Other federal insurance programs have been set up to cover similar risks like terrorism, flood, and crop losses and many stakeholders are suggesting a federal program for pandemics.

Highlights from the News and Related Research

Much of the coverage over the past few months has centered on a few key areas:

- **Lawsuits:** Business owners are suing insurers over denied claims. There are hundreds of ongoing suits and while most are favoring insurer's arguments, some business owners have found success in the courts.
- **Business owners:** The pandemic has had wide-reaching effects on business owners in many industries, but its effects have been particularly felt in the hospitality, restaurant, and other service-related businesses.
- **Proposed solutions:** Several different solutions have been proposed to offer business owners protection while not threatening insurer solvency.

Finally, we also cover actions taken at both the federal and state levels to help ease burdens on business owners this year.



1. [Insurers Winning Most, But Not All, Covid-19 Business Interruption Lawsuits](#)
(*Insurance Journal*, 11/30/2020)
 - So far, judges have dismissed more than four times as many business interruption lawsuits than they have allowed to proceed. Most of the dismissed cases had virus exclusion clauses in the plaintiff's policy.
 - Claims that have been successful in proceeding through the judicial process hinge on insurance policies' ambiguous language surrounding virus exclusions.
 - Insurers claiming that plaintiff's cases do not meet the physical damages requirement for BI coverage have largely been winning court [dismissals](#), according to the Insurance Information Institute.
 - To circumvent the physical damages requirement of BI policies, plaintiff's lawyers are arguing government lock-down orders should trigger BI coverage for their clients.
2. [The Key to Winning COVID Business-Interruption Claims: Say the Virus is Present](#)
(*Claims Journal*, 11/23/2020)
 - When no virus exclusion exists in the policy, some plaintiff attorneys are claiming that the physical presence of the coronavirus on physical surfaces poses an imminent health danger to the public. Insurers have been denied case dismissal or summary judgement in 6 out of 9 cases with no virus exclusion and claims of physical presence of the virus on surfaces.
 - Plaintiffs will not be able to prove the coronavirus exists on physical surfaces on their property. Even if these claims could be substantiated, courts have previously ruled that damages that can be easily cleaned (such as using commercial cleaning products to kill viruses) are not covered by property insurance.
3. [Courts Find Coverage for COVID-19 Business Interruption Losses](#)
(*PropertyCasualty360*, 11/13/2020)
 - Two business interruption cases in North Carolina and Florida have resulted in favorable rulings for policyholders:
 - i. ***North State Deli LLC et al. v. The Cincinnati Insurance Co. et al.***; 20-CVS-02569: The court granted summary judgment in favor of the policyholders (16 restaurants), finding that a commercial property insurance policy covers business interruption losses resulting from COVID-related government shutdown orders.
 - ii. ***Urogynecology Specialist of Florida, LLC v. Sentinel Insurance Company, Ltd.***: A Florida federal court determined a "virus exclusion" does not preclude a policyholder from pursuing insurance for COVID-related business interruption loss.

4. [COVID-19 Shutdowns, Related Litigation Put Pressure on Business Interruption Insurers](#) (*National Law Review*, 10/26/2020)
 - At least 1,250 business interruption cases have been filed nationally in both state and federal court and in every state. Over a third of these cases are filed by restaurants and bars.
 - In cases where courts ruled, at least 75% of cases have resulted in dismissals of policyholder's claims.
 - Two notable cases have ruled in favor of the plaintiff that insurers should note:
 - i. ***Optical Services USA/JCI v. Franklin Mutual Insurance Co.***, No. BER-L-3681-20, Superior Court of New Jersey, Law Division, Bergen County. The court ruled that the presence of physical particles of COVID-19 was not required under New Jersey law to state a claim for business interruption coverage.
 - ii. ***North State Deli LLC et al. v. The Cincinnati Insurance Co. et al.***; 20-CVS-02569 (see #3 above for details)

Business Owners' Perspectives & Business Closures

1. [3 Small-Business Owners on Life After Shutting Down](#) (*Vox*, 10/29/2020)
 - Service industry professionals in particular struggle with next steps as the "in-person" economy is still sluggish.
2. [Mapping the Uneven Recovery of America's Small Businesses](#) (*World Economic Forum*, 10/6/2020)
 - Revenues for small businesses in the leisure and hospitality sector have seen revenues fall by nearly half since the beginning of 2020.
 - In cities with large tech sectors, like Austin and San Francisco, restaurants were hit hard when workers switched to remote work.
3. [Small Businesses Are Closing at a Rapid Pace, With Restaurants and Retailers on the West Coast Among the Hardest Hit](#) (*Forbes*, 9/16/2020)
 - Hardest hit businesses include restaurants, retailers, and bars and West Coast businesses have taken a particularly bad hit, especially in areas dependent on the tourism industry (Las Vegas, Honolulu).
 - The professional services industries (healthcare, legal, accounting, and real estate) are remaining healthy. Home and auto services are staying strong, as well.
 - The Yelp Economic Impact report, which tracks business closures through Yelp customer review listings, found that an estimated 163,735 businesses have

closed in the U.S. since March 1, 2020. The numbers represent an increase of 23% since July 10th, when the count of closures sat at 132,580.

4. [Business Thought They Were Covered for the Pandemic. Insurers Say No.](#)
(*New York Times*, 8/5/2020)
 - At the writing of this article, over 400 BI lawsuits had been filed, most notably restaurant owners and sports teams.
 - Insurers argue that a pandemic is an uninsurable risk due to the widespread nature of the losses that render risk-pooling impossible.
5. [The impact of COVID-19 on Small Business Outcomes and Expectations](#)
(*Proceedings of the National Academy of Sciences*, 7/2020).
 - Many small businesses are “financially fragile;” the median businesses surveyed only had about 2 weeks of cash on hand, even early in the pandemic.
6. [Small Business Coronavirus Impact Poll](#)
(U.S. Chamber of Commerce, 7/2020)
 - As of July, 90% of small business owners polled reported their businesses open in some capacity. Restaurants and other service-based businesses were about 10% more likely to still be closed.
 - Among businesses that had to lay off or furlough workers, 48% thought it would be up to a year before they could rehire back to previous staffing levels.
7. [Arts Groups Fight Their Insurers Over Coverage on Virus Losses.](#)
(*New York Times*, 5/5/2020)
 - Filing lawsuits is too expensive for some arts-related venues or nonprofits to pursue.
 - Some arts organizations found at least some relief through policies that cover event cancellation, but those usually cover a single event and would not account for all lost revenue.
 - Broadway shows tended to fair better than most, as many policies tailored for theatrical productions do not have a physical loss requirement.

Pandemics & Small Business Solutions

1. [III CEO: Federal Solution Needed for Pandemic Business Interruption Insurance](#)
(*Best's Insurance News*, 11/20/2020)
 - Proposed legislation from Carolyn Maloney, the Pandemic Risk Insurance Act (PRIA), has been compared closely to another federal program, the Terrorism Risk Insurance Act (TRIA). PRIA would only cover business interruption and event cancellation losses, whereas TRIA covers those, in addition to property damage,

workers' compensation, and general liability. Despite insuring less lines of business, PRIA would be a much larger program than TRIA.

- The Business Continuity Protection Program proposed and supported by industry groups would be more of a voluntary program within FEMA.
- Sean Kevelighan emphasizes the importance of acting now to establish a federal program. Small businessowners who are suffering economically from pandemic losses and government shutdowns now are the result of such a system not being readily available to help provide relief.

2. [Best's Commentary: Public-Private Partnerships May Be a Needed Insurance Backstop Against COVID-19-Exposed Systemic Risk](#)

(*Best's Insurance News*, 10/12/2020)

- A.M. Best supports a public-private partnership to address the negative impacts of pandemics on businesses, given the systemic risk: "Insurers may be able to offer limited protection against pandemic risks; however, these limits would be insufficient for a full recovery. Only a governmental program, or perhaps a public-private partnership, could provide the backstop sufficient to compensate for lost revenue to businesses.

3. [Out in the Cold](#)

(*CFO*, 9/2020)

- Industry groups suggest different solutions for supporting small businesses during future pandemic losses. The American Property Casualty Insurance Association (APCIA) backs a workplace recovery fund that would immediately assist small businessowners with paying employees, as well as a Business Continuity Protection Program (BCPP) that would function similarly to the National Flood Insurance Program.
- The Risk Management Society (RIMS) supports a federal pandemic risk reinsurance program with the U.S. Treasury, while the CEO of Marsh believes a public-private partnership between insurers, the federal government, and policyholders is a potential solution.

[Federal Actions](#) and Proposed Solutions

- The [CARES \(Coronavirus Aid, Relief and Economic Security\) Act](#)
 - [Economic Injury Disaster Loans](#) (Small Business Administration loans)
 - [Paycheck Protection Program](#) loans (Closed in August 2020)
- [Families First Coronavirus Response Act](#)
 - Provided funding for testing, expanded unemployment benefits, paid sick leave, etc.

- [Employee Retention Credit](#)
 - The Internal Revenue Service created this program in March 2020 to provide a tax credit to employers who keep employees on their payroll.
- [Pandemic Risk Insurance Act \(PRIA\)](#) - Introduced by Carol Maloney (D-NY)
 - This program provides a federal backstop to insurers for pandemic-related losses over a certain threshold. As of 12/7/2020, the bill remains in the House Committee on Financial Services.

State Communications (Bulletins, Notices, and Webpages) Re: Business Interruption Insurance

State	Date	Communication
Alaska	5/13/2020	Consumer Advisory Alert: Business Interruption Insurance
Arkansas	3/23/2020	Bulletin No. 9-2020: Business Interruption Insurance and COVID-19
California	4/14/2020	Requirement to Accept, Forward, Acknowledge, and Fairly Investigate All Business Interruption Insurance Claims Caused by the COVID-19 Pandemic FAQ on Business Interruption Insurance
	3/26/2020	
Colorado	4/3/2020	FAQs on Business Interruption Insurance and COVID-19
Connecticut	3/23/2020	The Novel Coronavirus and Business Interruption Insurance
District of Columbia (D.C.)	3/24/2020	FAQs on Insurance Issues Related to COVID-19
Georgia	3/17/2020	Bulletin 20-EX-3: Business Interruption Insurance and COVID-19
Idaho	4/23/2020	Bulletin No. 20-08: Applicability of business interruption coverage to COVID-19 related claims
Illinois	8/28/2020	Business Interruption Task Force Meeting (9/1/2020)
Indiana		Business Interruption and Insurance
Kansas	Updated 11/13/2020	COVID-19 FAQ
Louisiana		Business Interruption Insurance FAQs
Minnesota		Business Interruption Insurance and COVID-19

Mississippi	4/24/2020	Understanding Business Interruption Insurance Coronavirus Information
Missouri	4/10/2020	Consumer Alert: Business Interruption and COVID-19
New Hampshire		FAQs about Business Interruption Insurance and COVID-19
New York		Coronavirus: Business Interruption Insurance FAQs
North Carolina	4/23/2020	Letter to Business Owners from Mike Causey, Insurance Commissioner
North Dakota		COVID-19 and Insurance
Oregon		Business Interruption Insurance and COVID-19
South Carolina		Business Interruption Coverage and the Coronavirus
Texas		Business Interruption and Other Business Insurance
Vermont	5/4/2020 3/17/2020	COVID-19 Guidance for Business Owners During the Phased Restart Vermont Initiative COVID-19 and Business Income Insurance
Virginia		Business Interruption Insurance Coverage and COVID-19
Washington		Coronavirus and Businesses
West Virginia	3/26/2020	Bulletin No. 20-08: Business Interruption Coverage and COVID-19
Wisconsin	3/26/2020	Evers Administration Issues Guidance for Businesses During COVID-19 Emergency Business Interruption During COVID-19

Further Reading Suggestions

- See the [Pandemic/Business Interruption Resource List](#) compiled by the CIPR Library team.

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