

BUSINESS INTERRUPTION INSURANCE AND COVID-19: COVERAGE ISSUES AND PUBLIC POLICY IMPLICATIONS

JILL M. BISCO, PH.D. | STEPHEN G. FIER, PH.D. | DAVID M. POOSER, PH.D.

IMPORTANCE In an effort to reduce the spread of COVID-19, many states and municipalities across the U.S. undertook various actions which resulted in businesses limiting or ceasing operations. While initial evidence suggests that these measures may have had the intended effect of slowing the spread of the virus, they also had a significant negative impact on the net income of firms across a wide-array of industries. Whether or not business interruption insurance should cover losses attributed to pandemics is being debated and legislative responses have been proposed, some of which would require involuntary coverage on a retroactive basis. Industry trade associations estimate that the outcome of these discussions and proposals could cost property-casualty insurers hundreds of billions of dollars.

OBJECTIVES Our study provides a discussion of the impact of COVID-19 on business interruption losses in the U.S. as well as an overview of the commonly relied upon ISO Business Income and Extra Expense (BIEE) insurance policy. We offer an analysis of the language contained in the unendorsed BIEE and summarize the arguments as to why business interruption insurance should or should not cover pandemic-related losses. Finally, we provide an overview of proposed approaches to address business interruption losses attributed to current and future pandemics.

EVIDENCE Although COVID-19 losses generally appear to be excluded from coverage, either by way of language that is present in the policy or through endorsements, some ambiguity exists as to whether the presence of the virus constitutes physical damage to or alteration of the property and whether coverage for losses due to civil authority should apply.

FINDINGS Business interruption losses due to COVID-19 are estimated to potentially exceed \$300 billion per month for small businesses. Many business owners have sought coverage for declines in net income through their business interruption insurance policies. In response, carriers and industry groups have stated that pandemic losses are not intended to be covered under the business interruption insurance policy and that the policies do not include, or even specifically exclude, pandemic coverage. Some businesses have responded by initiating lawsuits against their insurers.

In addition to these private actions, both state and federal governments have proposed legislation regarding indemnity for businesses impacted by pandemic losses. Several states proposed legislation to apply retroactive coverage for COVID-19 business interruption losses, although in some cases the legislation has already been withdrawn. Additionally, there has been a proposal for the federal government to provide a coverage backstop for catastrophic pandemic losses similar to the Terrorism Risk Insurance Act while some have proposed that only the public sector is capable of covering pandemic-related losses.

CONCLUSION & RELEVANCE Whether or not insurance will cover COVID-19 losses remains an open question and the answer to that question will ultimately have significant consequences for insurers as well as business owners. It is expected that even if insurers are successful in arguing that coverage does not exist for these losses, there will likely be significant legal expenses involved in defending denial-of-coverage and bad-faith lawsuits brought by policyholders while impending legislation will alter the insurance landscape as it relates to pandemics. We believe that regardless of the outcome, carriers as well as the ISO are likely to modify their business interruption policies and future demand for this coverage could be affected.

¹ Chiglinsky, K., 2020, "Insurers Worry Virus-Linked Costs May Reach \$383 Billion a Month", Bloomberg, accessed online at <https://www.bloomberg.com/news/articles/2020-03-30/insurers-worry-virus-linked-costs-may-reach-383-billion-a-month>.