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Business Interruption Insurance and COVID-19 - by Jonathan Berman

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In March 2020, life dramatically changed as a result of COVID-19. The global pandemic forced wide ranging closures including schools and businesses. The economy of the United States was shaken so badly as many businesses closed indefinitely due to the coronavirus outbreak. There were some business owners who thought that their insurance companies would take care of their financial losses during the pandemic. The widely held belief amongst these business owners was that their

business owner's insurance policy would provide relief in these difficult times. Specifically, they thought that their business interruption coverage would provide the aid that they desperately needed. Unfortunately, most of these business owners were wrong.

For a business owner's policy, the policyholder or named insured is the business itself. A business owner's policy may provide liability coverage and property coverage in the event that a disaster occurs. An important coverage for any business is business interruption or Loss of Business Income. This coverage is intended to pay a business while it cannot operate due to a disaster. Often times, the disaster causes fire damage or water damage that has affected the business so severely that it cannot continue conducting normal operations.

In order to be afforded coverage, the business must have suffered damage as a result of a covered cause of loss. Typically, a policyholder will buy an insurance policy that is a named perils policy or an all-risk policy. A named perils policy is far more limiting in terms of losses that are covered. For that reason, it is recommended that business owners purchase an all-risk policy.

A named perils policy only provides coverage for perils that are specifically named in the policy. Usually, a named perils policy will include perils such as fire or lightning, hail or windstorm, explosion, smoke, riot or civil commotion, vandalism, and theft.

In contrast to a named perils policy, an all-risk policy is far more comprehensive. An all-risk policy provides coverage to policyholders unless damage results from a cause of loss is specifically excluded. The exclusions are expressly written into the policy. As you might expect, the all-risk policy is more expensive than a named perils policy because the all-risk policy pays for a wider range of unfortunate events.

If a disaster is a covered cause of loss, then the limits under the insurance policy would apply. Generally, business interruption insurance pays businesses for their lost revenue, continuing expenses, and payroll. These costs are paid for by the insurance carrier while the business is unable to operate. There are endorsements that can be added to a business owner's policy, which can provide additional coverage.

Extra expense coverage is an important endorsement for businesses to purchase. For an additional premium, a business can purchase extra expense coverage. This coverage will allow a business to be reimbursed for reasonable expenses that are necessary in order for a business to continue operating or to expedite the return to normal operations. Essentially, these are expenses that a business incurs in order to mitigate their losses. For example, a computer software company might need to temporarily move to another location while their office is unusable due to a pipe break. If the business needed to hire a moving company, then that expense should be covered under the extra expense endorsement. Similarly, if the business had to buy or lease equipment necessary to keep the business up and running, then that cost should be covered under extra expense.

A tremendous number of businesses suffered greatly as a result of COVID-19. Unfortunately, the vast majority of insurance claims filed by businesses that were affected by COVID-19 were denied

by insurance carriers. Typically, insurance companies denied these claims by citing language in the policy that required the business interruption be the result of a directly physical loss at the business. For many of the claims, the carriers contended that the virus was not physically present in many businesses that needed to temporarily close. In other instances, insurance companies relied on virus related exclusion clauses included in the business owner's policy to deny claims. On this basis, the insurance company was not liable for the losses that the businesses incurred.

In order to pursue recovery of their losses, some businesses have hired attorneys to sue their insurance companies. To date, the majority of these lawsuits have not been successful. However, there is ongoing litigation and a small percentage of businesses have been successful.

Certainly, a global pandemic is not something that most businesses have ever considered contending with. The more mundane types of insurance claims (fire, flood, etc.) are problems that business are aware of and seek to protect their businesses against. A business should familiarize themselves with their business owners insurance policy in order to make sure that they have proper coverage for disasters that could temporarily halt their operations.

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