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# COVID-19 Webinar: Insurance Coverage Issues for the Tree Care Industry

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## ***First-Party Insurance***

- Commercial Property Insurance
- Business Interruption, Extra Expense and Other Time Element Coverages
- Government Interventions

## ***Third-Party/Liability Insurance***

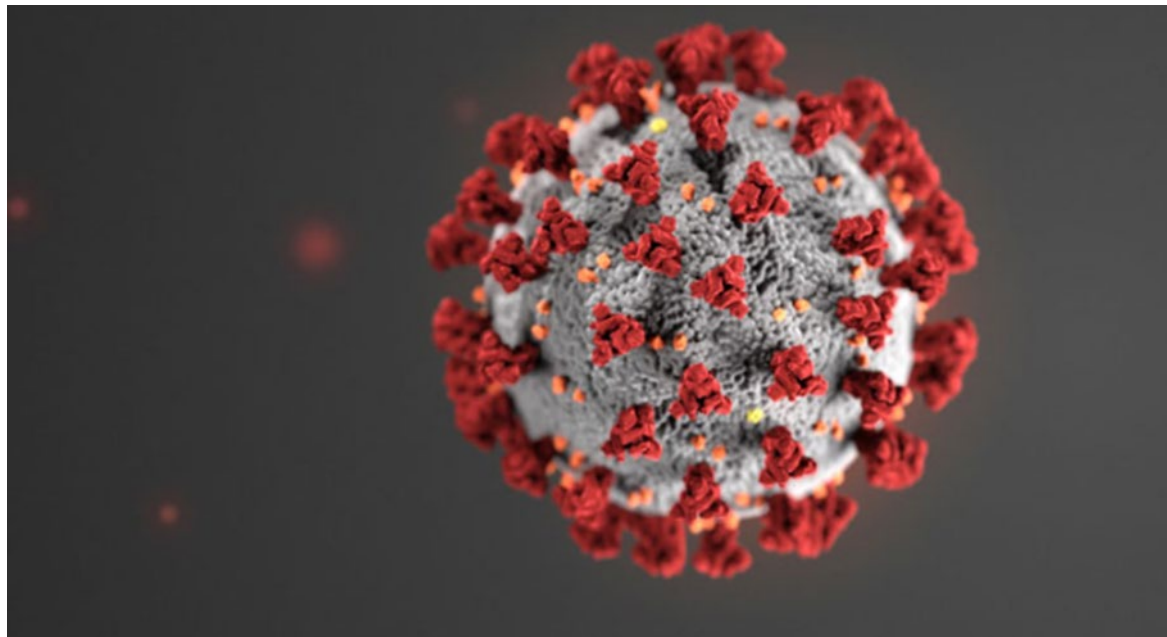
- Commercial General Liability (CGL)
- Employment-Related Insurance (WC, EL, EPLI)

## ***Key Takeaways***

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# First Party Insurance

- **Commercial Property Insurance** – Covers physical damage to insured buildings and contents due to a covered cause of loss, and provides other time element coverages.



- **Business Interruption** - Covers loss of income suffered by an insured when damages to its premises cause a slowdown or suspension of operations.



- **Extra Expense** - Covers costs necessary to mitigate business interruption loss
- **Civil Authority** - Covers loss resulting from governmental orders due to property damage elsewhere
- **Contingent Business Interruption (CBI)** - Covers losses resulting from an interruption of business at the premises of a customer or supplier (supply chain interruption)
- **Preservation of Property**

## Key coverage question

- Is there physical damage?

## Key Exclusions & Sublimits

- Contamination/Pollution Exclusions
- Virus or Bacteria Exclusion
- Communicable Disease Sublimit

## Other Key Features & Specialized Coverages

- Claim Preparation Costs
- Communicable Disease Coverage/Endorsement



## Recent Lawsuits to Enforce Business-Interruption Coverage for COVID-19:

- *Cajun Conti (dba Oceana Grill) v. Lloyd's of London*, La. Dist. Court, Orleans Parish, 3/17/20)
- *Chickasaw Nation v. Lexington Ins. Co.*, (Pontotoc Cty, OK, 3/24/20)
- *Choctaw Nation v. Lexington Ins. Co.*, (Bryan Cty, OK, 3/24/20)
- *French Laundry v. Hartford Fire Ins. Co.*, (Alameda Co., 3/25/20)
- *Coffey & McKenzie v. Twin City Fire Ins. Co.*, (Clarendon, SC, 3/36/20)
- *La Trove Tavern v. Society Ins. Co.*, (N.D.Ill., 3/27/20)
- *Billy Goat Tavern v. Society Ins. Co.*, (N.D.Ill, 3/31/20) (class action)
- *Café La Trove v. Aspen Specialty Ins. Co.*, (Miami, 3/31/20)

More than 100 cases,  
and counting.

# Key Considerations for Business Interruption Coverage

- Has there been a confirmed infection at your premises?
- Have government orders shut down your business (or part of it), or a nearby “attraction” property, due to the virus?
- Have your customers’ properties shut down and impacted your business as a result?
- Has your or your customers’ supply chain been disrupted because of COVID-19?

- Analyze your policies' terms, conditions, and exclusions
- Provide timely notice
- Document your loss

- U.S. Congress
- State Legislatures
  - New Jersey
  - New York
  - Ohio
  - Massachusetts
  - Louisiana
  - Pennsylvania
  - South Carolina
  - California
- State Regulators
  - New York
  - California

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# Third-Party Insurance

- CGL policies cover liability for bodily injury and property damage to third parties caused by insured
- Examples of COVID-19-related allegations:
  - Sickness caused by insured's failure to take necessary precautions to prevent exposure to infected individuals
  - Insured's failure to have proper procedures to prevent spread
    - Weissberger v. Princess Cruise Lines* (C.D. Cal. 3/12/20)
      - Plaintiffs were quarantined on Grand Princess
      - Allege injury from company's failure to take precautions to prevent infection
- If a customer or other third party alleges bodily injury or property damage because of insured's negligence, should be coverage unless excluded

- Pollution exclusion
  - *Westport Ins. Corp. v. VN Hotel Group, LLC*, 761 F. Supp. 2d 1337, 1343–44 (M.D. Fla. 2010), aff'd, 513 Fed. Appx. 927 (11th Cir. 2013)(finding pollution exclusion inapplicable, as **Legionella bacteria is not a pollutant**)
- Virus/bacteria exclusion
  - Post-2003 (SARs outbreak) exclusion for loss caused by any “virus, bacterium, or other micro-organism that induces or is capable of inducing physical distress, illness or disease”
- Analyze policy for such exclusions and any endorsements that can change or add coverage and are specific to each policy
- Consider policy construction rules in applicable jurisdiction
- Broad Duty to Defend – Potentiality and Eight-Corners Rule
- Significance of “because of” language in GL insurance policies

# Employment-Related Coverages

**Workers' Compensation  
(WC)**

**Employer's Liability (EL)  
Insurance**

**Employment Practices  
Liability Insurance (EPLI)**



- Take inventory of your insurance policies
- Gather the facts and other details of your claim
- Analyze the specific terms and conditions of your policies in view of the facts of your claim
- Notify your insurers – analyze timing and other notice requirements in all applicable policies.
- Consider Other People's Insurance

# Contact Information



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# Hunton COVID-19 Resource Links

## **Coronavirus (COVID-19) Resource Center:**

<https://www.huntonak.com/en/coronavirus-resource-center/>

## **Banking and Financial Services Pandemic Resource Center:**

<https://www.huntonak.com/en/coronavirus-resource-center/banking-and-financial-services-pandemic-resource-center.html>

## **Insurance Coverage Pandemic Resource Center:**

<https://www.huntonak.com/en/coronavirus-resource-center/insurance-coverage-covid-19-resource-center.html>

## **Labor and Employment Pandemic Resource Center:**

<https://www.huntonak.com/en/coronavirus-resource-center/labor-and-employment-business-immigration.html>

## **Real Estate Pandemic Resource Center:**

<https://www.huntonak.com/en/coronavirus-resource-center/real-estate-pandemic-resource-center.html>