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
First Party Insurance
Commercial Property 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.
Commercial Property Insurance

- **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**
Commercial Property Insurance

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)
- **Coffey & McKenzie v. Twin City Fire Ins. Co.**, (Clarendon, SC, 3/36/20)
- **Big Onion Tavern v. Society Ins. Co.**, (N.D.Ill., 3/27/20)
- **Billy Goat Tavern v. Society Ins. Co.**, (N.D.Ill, 3/31/20) \(\text{class action}\)
- **Café La Trova v. Aspen Specialty Ins. Co.**, (Miami, 3/31/20)
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?
Your Duties

- Analyze your policies’ terms, conditions, and exclusions
- Provide timely notice
- Document your loss
Government Intervention

• U.S. Congress

• State Legislatures
  • New Jersey
  • New York
  • Ohio
  • Massachusetts
  • Louisiana
  • Pennsylvania
  • South Carolina
  • California

• State Regulators
  • New York
  • California
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
    • Alleged 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)
Key Takeaways

• 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:

Banking and Financial Services Pandemic Resource Center:

Insurance Coverage Pandemic Resource Center:

Labor and Employment Pandemic Resource Center:

Real Estate Pandemic Resource Center: