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Business Income Insurance

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Business Income Insurance and the Coronavirus

During a recent Coronavirus update meeting, President Donald Trump said that he thinks that many insurance companies should be paying business income losses due to the coronavirus pandemic.

He acknowledged that many policies exclude events such as epidemics, but “in a lot of cases, I don’t see it. I would like to see the insurance companies pay if they need to pay.”

Under property insurance policies, including standard BOP policies, business income insurance is triggered by the same perils that trigger direct property loss. Typically, these are perils such as fire, windstorm, and even human-



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This Just In...

Statement by the National Association of Insurance Commissioners Regarding COVID-19 Business Income Losses

We thank Congress and the Administration for acting quickly to give states greater flexibility to protect consumers and deal with ever-changing market dynamics However, as Congress considers further legislative proposals to address the devastating impacts of the COVID-19 pandemic, we would caution against and oppose proposals that would require insurers to retroactively pay unfunded COVID-19 business interruption claims that insurance policies do not currently cover.

Business interruption policies were generally not designed or priced to provide coverage against communicable diseases, such as COVID-19 and therefore include exclusions for that risk. Insurance works well and remains affordable when a relatively small number of claims are spread

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caused perils like vandalism and terrorism. In most cases, though, property and business income policies do not include coverage for viruses or pandemics and, in many cases, specifically exclude these perils.

SARS Virus Exclusion in Property and Business Income Policies

In July 2006, The Insurance Services Office (ISO) created an exclusion used in the majority of U.S. insurance policies that has been approved by regulators that explicitly excludes the SARS virus — a type of coronavirus — for coverage under direct or indirect (that is business income) loss. (They also created an endorsement that includes this coverage, though no state insurance commissioners have yet approved it; *more on this later.*)

After Mr. Trump's news conference statement, insurance company spokespeople were quick to explain that if property insurance policies were intended to cover instances such as pandemics, they would collect a premium for that contingency, which would undoubtedly be costly.

Several Republican senators agreed and responded to Trump with a letter, objecting and saying the attempt to "rewrite" insurance contracts would undermine the insurance system.

"Because (business interruption) insurance typically does not cover pandemics absent an explicit rider, insureds under these policies were never charged premiums for that risk and insurers did not reserve for or hold capital against the potential future loss," the letter states.

State Legislatures Propose Making Insurers Pay Business Income Losses

However, many states are now proposing legislation to require insurance companies to cover business income losses from the pandemic regardless of exclusions or the existence of specific policy wording to the contrary. Some of these proposals are based on various theories of coverage:

- ✱ Denial of access to business premises due to decrees of civil authorities (this is often a covered peril though there is the virus exclusion to deal with)
- ✱ Loss of use of premises due to coronavirus (assuming the ISO virus exclusion does not apply)
- ✱ Disruption of supply and distribution chains due to coronavirus (supply chain losses must be from a covered peril, although again the ISO exclusion could invalidate this approach).

Probably the most novel approach to finding coverage under a typical property and business income policy is that taken by New Jersey. It, along with several other states, including New York, Massachusetts and Ohio, is proposing laws to mandate insurance coverage for business income loss.

The proposed New Jersey legislation states that every insurance policy covering loss or damage to property, which includes business interruption, in force from March 9 will be understood to include coverage for business interruption due to a global virus transmission or pandemic. The coverage pro-

This Just In

vided would be subject to the limits under the policy and would reimburse the insured for business interruption losses during the state of emergency.

across a broader group, and therefore it is not typically well suited for a global pandemic where virtually every policyholder suffers significant losses at the same time for an extended period. While the U.S. insurance sector remains strong, if insurance companies are required to cover such claims, such an action would create substantial solvency risks for the sector, significantly undermine the ability of insurers to pay other types of claims, and potentially exacerbate the negative financial and economic impacts the country is currently experiencing. Moving forward, if Congress believes that the business interruption insurance sector can play a vital role in addressing the policy challenges of future pandemics, we stand ready to work with Congress on such solutions. However, swift action by Congress to directly address the needs of citizens and our economy is the most effective and expedient means to addressing the devastating impact of COVID-19.

However, the mandate also offers relief to insurance companies. They are to be reimbursed for their payments. When insurers pay coronavirus business interruption claims they can apply to the New Jersey Commissioner of Banking and Insurance "for relief and reimbursement from a collection of funds made available for this purpose."

The proposed legislation stipulates that losses due to global virus transmission and pandemic are generally excluded from the list of covered perils under the existing standard

business interruption insurance policy. But it goes on to say that the insurance industry has developed a rider to provide policyholders the option of purchasing coverage, but no states have yet approved the form to date.

So what New Jersey is doing is making that coverage available retroactively and assuming that every business in New Jersey would have purchased it if it had been available!

“This bill is intended to hold harmless a certain portion of the business sector, which had the foresight to purchase business interruption insurance, for losses sustained as a result of the current health emergency, but for which no such coverage is currently offered,” according to the proposed legislation.

We don't know how these efforts will play out in the long run. But we know the president and even the insurance companies (note how many auto insurers are refunding a portion of paid premiums because people are driving less) are probably making a sincere effort to do what they can to get the country back on its feet as soon as possible. ■

Is Your Auto Insurance Delivering During the Pandemic?

Has your business been declared an essential service during the pandemic? If so, you are probably making home deliveries either for the first time or to a greater extent than before.

Almost every state requires commercial auto insurance for businesses with vehicles titled to the company driven by employees.

But what if employees use their own cars? Or your business hires outside drivers or delivery services?

The simple solution here is to add “hired and non-owned” auto coverage to your policy and in-

clude “employees as additional insureds.” Your business is protected, and your employee is protected. In the event of an accident involving an employee owned vehicle that’s insured with the employee’s personal auto policy, the employee’s personal auto will pay first, with the business owner policy paying any excess amounts under the claim.

Without hired and non-owned coverage with employees as additional insured, both your business

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and your employees would not likely be covered when employees are making deliveries in their personal vehicles. The reason is that personal auto policies specifically exclude using the insured vehicle for “livery” — carrying goods or people for a fee.

So, the prudent thing for businesses to do is carry the proper business auto coverage. However, in view of the special situation existing during the pandemic a couple of other solutions have presented themselves — which even if your business is properly covered for automobile liability offer backstop protection.

Insurers Suspend “Livery” Exclusion

Some auto insurance companies, including Allstate, Farmers, Progressive, Liberty Mutual, Travelers and USAA, have agreed to include coverage for drivers with personal auto insurance who deliver, food, medicine and other essential items. When coverage starts and the duration of coverage depends on the company.

Coverage by Insurance Commissioner Mandate

In many states, including California, Colorado, Montana, North Dakota, Washington, Tennessee, Wisconsin and Montana, state insurance commissioners have stepped in to require insurance companies to provide coverage for per-

sonal auto insurance policyholders while making deliveries. The “notice” issued on April 10th by California Insurance Commissioner Ricardo Lara is typical: “Insurance companies should not deny a claim under a personal auto policy solely because the driver was providing delivery service on behalf of a California essential business impacted by the COVID-19 pandemic.”

The Notice applies to 16 categories of “essential critical infrastructure workers identified by the U.S. Department of Homeland Security on March 19, including those who deliver food, medication, and other essential goods.”

The California insurance commissioner also “requested insurance companies to extend delivery coverage for motorcycle and bicycle riders, and allow essential businesses to retroactively add drivers to their commercial automobile policies beginning on March 19, 2020.”

These suspensions of the personal auto insurance “livery” exclusion benefit the drivers of course. But employers also benefit, since their liability in the event of an auto claim is substantially reduced with their non-owned and hired coverage stepping in only as excess insurance. With fewer cars on the road, accident rates are also lower, making the suspension of the “livery” exclusion more palatable for insurance companies.

If you have questions about your auto insurance coverage, especially during the pandemic, please contact us. ■

Cyber Security and Working Remotely in the Pandemic

Now with so many more people working from home because of the coronavirus pandemic, it's a good time to review your off-site cybersecurity practices.

Many — maybe even most — of the people now working from home have probably never worked for you from home before. So, just because you've established protocols in the past few years, don't assume everyone knows or understands them.

But before advising employees of the cyber security rules they should follow, make sure your own house is in order:

- ✦ Protect against spyware, and other malicious code with anti-virus and other software. Update these protocols regularly.
- ✦ Use a Virtual Network with Multifactor Identification. A VPN hides your real IP address, effectively masking your online identity, encrypting your online connections and protecting your data from hackers and ISP/government surveillance. Multifactor Identification permits access only after someone has presented multiple pieces of evidence (factors) establishing their identity, such a PIN, by answering questions only they know the

answers to or providing codes sent to them via a different device they have access to.

- ✱ Secure the contents of your networks: Use a firewall and encrypt your information. Make sure your Wi-Fi network is secure and hidden. If employees download files to take home, make sure the files are encrypted when downloaded. Insurers have denied claims resulting from unencrypted thumb drive downloads.
- ✱ Control physical access to computers and network components: Not everyone needs access to all parts of the network. Set-up protocols and passwords appropriate for each tier of access. Prevent access by unauthorized users. Make sure a separate user account is created for each employee and require strong passwords.
- ✱ Establish security practices and policies to protect sensitive information: Establish policies on how employees should handle and protect personally identifiable information about personnel and other sensitive data related to HIPAA regulations.
- ✱ Make backup copies of important business data and information: Regularly backup critical data on all computers and store in the cloud or offsite.

For all its benefits, working remotely presents some cyber liability concerns for employers. Some companies have tried to ensure cyber security on remote devices such as laptops by issuing them to employees already outfitted with controls. However, most companies have come to accept that employees



tend to prefer using their own devices when working remotely.

The good news is that most cyber insurance policies do not exclude claims originating remotely (you might want to check yours though). Still, you want your employees to be vigilant about practicing good cyber hygiene. They should:

- ✱ Use strong passwords and change them often: Using multi-factor identification is just as important offsite as onsite (see above).
- ✱ Log off the company computer when finished working.
- ✱ Maintain security software on home computers and stay up to date with the latest updates and security patches.
- ✱ Back up regularly.
- ✱ Install security codes on Wi-Fi and other internal home systems. A special concern

is the possibility of intruders hacking into an employee's Wi-Fi or even hacking into nanny cams or appliance-based systems (Internet of Things — IoT — devices) to collect sensitive information. According to a study by Raytheon, IoT is perceived by 82% of IT professionals to be an open door to a cyber catastrophe for most firms.

- ✱ Be wary of phishing and other internet scams. People working from home are susceptible to criminals who try to pose as people from the employee's own company, such as information technology workers. They may say or seem to know things that inspire enough trust to make an employee download a dangerous file or click on links that trigger malicious activities. According to Lloyd's of London, 80% of cyber incidents last year, including ransomware attacks, originated remotely.



Cyber Security for Mobile Devices

If you use a mobile device for company business here security steps you should take.

- ✱ Create a strong pin or password,
- ✱ Enable face or fingerprint recognition,
- ✱ Disable Wi-Fi and Bluetooth when not needed,
- ✱ Be careful about which apps you download,
- ✱ Disable location services when not needed,
- ✱ Backup your phone often, and
- ✱ Consider installing remote wipe software to remove data remotely in the event your device is stolen or lost.

Beyond these simple rules, keep in mind you need to also follow good general cyber hygiene. For example, mobile users are most vulnerable to phishing attacks because of the way mobile email clients display only a sender's name. This makes it easier to spoof messages and trick someone into thinking an email is from someone they know or trust. According to an IBM study, mobile users are three times more likely to respond to a phishing attack.

Remember, too, a mobile device is only as secure as the network it's linked to. Since on average corporate mobile devices use Wi-Fi three times more than cellular data, they spend much of time con-



nected to open and potentially insecure Wi-Fi networks. The best way to ensure your connection isn't vulnerable is by using encryption methods such as a VPN to authenticate messages are coming from a legitimate source. ■

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