



**CARR ALLISON**

ALABAMA | FLORIDA | MISSISSIPPI | TENNESSEE

## **Business Interruption Insurance Lawsuits Expected to Explode**

**If you have any questions regarding COVID-19,  
please do not hesitate to contact our  
Carr Allison COVID-19 Response Team.**

**[www.carrallison.com](http://www.carrallison.com)**

**Phone: (205) 949.2930 | [badair@carrallison.com](mailto:badair@carrallison.com)**

**Phone: (205) 949.2949 | [mzwilling@carrallison.com](mailto:mzwilling@carrallison.com)**

**[Carr Allison COVID-19 Response Team](#)**

The coronavirus disease pandemic came out of nowhere and has literally shaken almost every individual and business to the core. Practically every aspect of life was dramatically altered in an instant. While the scientific community bears the tremendous burden of saving human lives, the insurance industry is now being called upon, in essence, to save the economic lives of many businesses across the country.

In March, government mandated shutdowns related to COVID-19 required the immediate closure of businesses in almost every industry. The loss of revenue has already caused many to close their doors forever. Countless others who were able to remain in operation are now struggling to survive. As a result, claims for business interruption coverage have flooded insurance companies across America.

The National Restaurant Association estimates that, without insurance proceeds or other methods of financial assistance, as many as 40 percent of restaurants will have no choice but to close their doors forever. Restaurants, retail stores, sports and entertainment venues, personal service providers, transportation and travel related industries have been hit especially hard.

The insurance industry has overwhelmingly taken the position that business interruption insurance policies do not cover COVID-19 related claims. Accordingly, claims are being denied almost as quickly as they are being filed. Most insurers argue that business interruption policies were written to cover natural disasters, not global pandemics, and that paying on the massive volume of claims would likely bankrupt the industry. A great number of the policies at issue were written to specifically exclude viruses and diseases.

As a result of the refusal to provide coverage, a plethora of breach of contract claims for businesses that suffered financial loss or were forced to closed permanently due to COVID-19 government mandated shutdowns have already been filed in state and federal courts across the country. Insurance companies are not expected to settle the thousands of business interruption cases that will be filed without first conducting a thorough, in-depth analysis of the specific policy language and unique facts of each case. As such, the litigation process in each case is likely to take some time.

One growing issue concerns which courts should hear and adjudicate COVID-19 business interruption breach of contract claims. The United States Judicial Panel on Multidistrict Litigation, (MDL Panel), the special body established by Congress in 1968 to manage multidistrict litigation, has been asked by some groups of plaintiffs' attorneys to coordinate all COVID-19 business interruption lawsuits. The insurance industry is fiercely opposed to such consolidation. Arguments have been made that claims involve different insurance policies with varying language and unique facts such that consolidation is inappropriate. Many also fear that politics could become inappropriately involved in the resolution of consolidated cases.

State and federal legislators are not sitting idly by during this debate. Several lawmakers have introduced legislation that would retroactively rewrite insurance policies to require coverage that would not have otherwise been required. Bills have been introduced in at least eight states that would require insurers to pay business interruption claims related to COVID-19 closures. The insurance industry is fiercely opposed to those legislative efforts. The National Association of Insurance Commissioners (NAIC) stated that "insurance works well and remains affordable when a relatively small number of claims are spread 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.”<sup>1</sup>

Some believe that businesses and insurance companies will likely have to work out some type of resolution that keeps both going. Reaching an agreement on the complex issues involved would not likely be a quick process and the number of COVID-19 related business casualties would continue to rise.

Others predict that the outcome of this debate will include insurers asking Congress for assistance in paying business interruption claims. This type of resolution would require significant compromise on all sides. The term bailout is being used with increasing frequency, with some expecting that the government will offer some type of bailout to either the insurance industry or small businesses.

The issue concerning the insurability of COVID-19 business interruption claims is not going away soon. In fact, it is expected to grow to include a tremendous volume of claims and lawsuits very quickly. As this situation develops, we will continue to keep you advised. If you have any questions or if we can help with any business interruption insurance issue, please let us know.

<sup>1</sup> [https://content.naic.org/article/statement\\_naic\\_statement\\_congressional\\_action\\_relating\\_covid\\_19.htm](https://content.naic.org/article/statement_naic_statement_congressional_action_relating_covid_19.htm)