



Novel Coronavirus (COVID-19)

Business Law

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COVID-19 Insurance Considerations: Business Interruption and Other Indemnity Opportunities

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The COVID-19 pandemic is evolving hourly. At present, Ontario is in a state of emergency, and it is likely that most Provinces will follow suit. Extreme “social distancing” measures have taken hold nation-wide, and this has already caused dramatic consequences to businesses in almost every sector.

Some of our clients have been asking whether they will be entitled to insurance coverage for business interruption and related economic losses resulting from the COVID-19 climate. This is a nuanced and complex question, and we highlight some key considerations below.

Considerations for Potential Insurance Coverage

Whether or not your business will be entitled to insurance coverage for COVID-19 related losses will depend on an analysis of the specific terms and conditions of your policy, as well as its riders/endorsements. It will also depend on an analysis of the facts surrounding the circumstances of the loss, and how these apply to the policy wording.

Policies of commercial insurance can be dramatically different from one policy to another. Furthermore, the Declarations pages can often be confusing and difficult to decipher. We often see provisions for business interruption, accounts receivable, and product impairment buried in riders and endorsements which themselves can be difficult to interpret.

Business interruption insurance typically provides coverage for lost income and extra expenses arising from a “direct physical loss” to property of the business. Claiming business interruption coverage is more straightforward when, for example, a warehouse burns down. It will be less straightforward in the context of the COVID-19 pandemic.

Entitlement to business interruption coverage can only be determined upon an analysis of the particular policy in place, as well as the specific circumstances by which the COVID-19 pandemic may have caused or contributed to a loss. We are in highly unique circumstances, and law-altering litigation may result from

this situation. Further, some policies have unique and potentially relevant coverages in the event of supply chain breakdowns and government action, for example. These may not be obvious on the face of a policy.

Generally speaking, there is little harm in presenting a claim to your insurer, especially considering the magnitude of anticipated losses resulting from COVID-19. In presenting a claim, businesses are required to establish their financial losses, and the root causes. As such, it is critical that businesses work with their internal and external financial teams at documenting all losses, and any efforts at mitigation.

The lawyers at Torkin Manes understand the stress that businesses all over the country are feeling right now. We can provide creative advice on any entitlements to insurance coverage that may be available in this unique climate, and we can assist in navigating the claims presentation process, should a business choose to go down this road.

Please do not hesitate to contact your Torkin Manes lawyer for any of your insurance or other business inquiries. For more information about dealing with COVID-19, please visit our COVID-19 Resource Center.

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