

**AUTHOR**

David W. Smiley

CONTACT ATTORNEYSDavid W. Smiley
dsmiley@ftblaw.com

INSURANCE COVERAGE FOR BUSINESS INTERRUPTION LOSSES CAUSED BY COVID-19

The growing pandemic of COVID-19 has had a crippling effect nationwide. California, Illinois, New York, and at least 19 other states have implemented some form of stay home order, which have forced many businesses to close their doors.

While many of these shelter-in-place restrictions have excepted construction work, contractors may experience losses in business income from COVID-19 related impacts to jobsite working conditions, material unavailability from national and global supply chain interruption, and other impacts.

WILL BUSINESS PROPERTY INSURANCE COVER BUSINESS INTERRUPTION CLAIMS?

This raises the question, does business property insurance cover business interruption caused by COVID-19 and its related impacts? Unfortunately, the answer is probably not. Business property policies may cover business interruption but, typically, only if the business interruption was caused by physical damage to company property, or business suspensions by a "civil authority" and occasioned by physical property damage. Under either scenario, it is unlikely coverage would be afforded. Also, after the SARS outbreak in 2007, a number of insurers have included endorsements that specifically exclude

business interruptions caused by virus outbreaks and quarantines. On the other hand, some business property insurance policies provide "all-risk" coverage, which may provide business interruption benefits, subject to the limitations stated in the policy.

BUILDER'S RISK INSURANCE MAY OFFER SOME COVERAGE.

Another form of first party insurance that may be available to construction companies affected by COVID-19 is builder's risk insurance. Like business property insurance, builder's risk policies typically condition coverage on events causing physical property damage or natural disasters such as floods and fires. However, it is possible that a builder's risk policy may provide coverage for project suspensions and material supply chain interruptions caused by orders from "civil authorities." While the policy will not likely cover business interruption costs for contractors hired by the owner, builder's risk insurance may provide recovery of certain direct and indirect costs and material escalation costs →

Finch, Thornton & Baird LLP
4747 Executive Drive, Suite 700
San Diego, CA 92121

T 858.737.3100
F 858.737.3101

ftblaw.com

caused by a covered project suspension or supply chain interruption. Builder's risk policies have strict notice provisions and contractors should contact the project owner for a copy of the builder's risk policy to examine and, if coverage is afforded, provide timely notice of claim.

READ YOUR POLICY CAREFULLY.

While the insurance coverage picture for business interruption under business property and builder's risk policies is dim, owners of construction and material supply companies are encouraged to review these policies with an insurance professional or insurance coverage counsel before ruling them out as potential source of business interruption recovery.

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For more information, please contact David W. Smiley, Esq. at (858) 737-3100.

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