

## [Insurers challenged for denying business-interruption coverage during coronavirus economic lockdown](#)

North Bay Business Journal

In a shot over the bow and precursor of a long, upcoming legal battle, the California insurance commissioner on April 14 issued an order requiring carriers to investigate claims filed by businesses seeking relief for losses incurred from government shutdowns as the result of the COVID-19 virus.

Commissioner Ricardo Lara's order mandates the insurer "communicate the denial in writing to the policyholder listing all the legal and factual bases for such denial."

North Bay attorneys have weighed in, with a firm in Novato filing last week a class-action suit in federal court out of Las Vegas on behalf of a restaurant chain against two insurance carriers.

The Brayton Purcell firm awaits a judge's decision to grant a jury trial in Egg Works' case against Acuity, based in Wisconsin, and Tokio Marine, located in New York. Both carriers fall under the corporate arm of U.S. Specialty Insurance.

The businesses are seeking to recover losses through their business interruption insurance after Nevada Gov. Steve Sisolak issued a stay-at-home order and shuttered the Egg Works restaurants that serve 150 tables and employ 400 Clark County residents.

The complaint claims breach of contract and a default of good faith by the insurance carriers.

"Defendant expressly agrees to pay for loss of gross revenue incurred as a result of the perils not excluded under the policy," the complaint reads. "Defendant promised to pay for losses of business

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income sustained as a result of a business interruption.”

Numerous calls to the insurance carriers were unreturned. Egg Works owner Brad Burdsall was unavailable for comment.

But his North Bay attorney, Gil Purcell, laid out what he perceives as a promising argument that may set a precedent so monumental it could either force the insurance industry to collapse or leave scores of businesses sustaining huge losses out in the cold.

“This is a large challenge, with multiple facets,” Purcell told the Business Journal, further acknowledging how influential the insurance industry is. “But they’re being asked to perform what they’re paid to do.”

Business-interruption insurance is an optional coverage that may be bought as part of a comprehensive multi-peril commercial policy, one for business owners or as stand-alone protection. It’s expensive coverage as most commercial policies go, increasing the cost of business coverage by a minimum of \$50,000 up to \$150,000 a year, said Purcell.

Purcell contends these policy claims should be paid because the businesses were following a government mandate.

“This is not virus-related. You are shut down because of the risk of it, acting on the government’s) civil authority,” he said.

Like other North Bay attorneys, Purcell expects insurance companies to claim the policy has no bearing on covered losses from the coronavirus — with some insurance carriers writing in recent virus exclusions to eliminate having to provide further interpretation.

Purcell admitted “it’s hard to say” whether winning a favorable judgment on a case involving business interruption insurance can influence other cases without the modular coverage.

“That’s certainly a concern,” he said.

If indeed that happens, many watching the legal battle see a dilemma playing out. Either the insurance

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industry may collapse under an insurmountable amount of payments on claims and therefore need a bailout from government or small businesses go under at an alarming rate because there is no safety net to help them deal with losing most of their income.

Smith Dollar attorney Justin Smith predicted the insurance industry will file bankruptcy if they're having to pay on all these claims given the mounting income lost by business across the nation.

"For companies that underwrite specific exclusions, they'll be fine," the Santa Rosa lawyer said.

"This is a life-and-death question for the insurance industry, and they'll fight tooth and nail," Santa Rosa attorney John Friedemann said, estimating a loss on either side could top \$1 trillion. "That's the existential question."

Friedemann Goldberg has been here before with a larger-than-life, mass insurance policy interpretation. It donated a free hour of policy consultation to wildfire victims trying to come out from under the double-whammy misery of losing property then failing to be made whole again.

"We found out they were unbelievably difficult to understand. It's the same with business interruption insurance," he said.

To counter the insurance companies, Friedemann also agreed the best argument lies in the business reacting to the law of civil authority. It's not a matter of covering a loss "as a result of a pandemic."

o Ragghianti Freitas attorney Eric Sternberger, the challenge for insureds lies with insurance companies adding exclusions to their policies once the SARS virus hit in 2002.

"The challenge with business-interruption insurance is it's very policy specific. It comes down to what the policy says."

The San Rafael lawyer is "interested to see" if government takes a stand on the matter. In the meantime, Sternberger believes the battle between law firms representing businesses and insurance companies will be "hard fought."

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United Policyholders Executive Director Amy Bach agreed. Her consumer advocacy organization, based in San Francisco, is armed with more than 100 sponsors and 250 lawyer volunteers to take on a hefty legal machine the insurance industry has always harbored.

Bach, herself a lawyer, predicts the insurance industry will come at this threat full-throttle, “creating fear and discouragement” among those who challenge it.

“What my organization is saying is there should be no rush to judgment until the facts come out,” she said. United Policyholders is maintaining a library of COVID-19-related information.

Still, her prediction on a favorable outcome for businesses seeking relief is “better than a snowball’s chance in hell).”

The data gathering may come in handy for Ray Sheen of Farella Braun + Martel in St. Helena. He was motivated enough to host a webinar on the subject that attracted 125 participants at the beginning of April.

“It’s an important subject. It comes down to what does your policy say, and what, if any exclusions, are there?” Sheen said.

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