

COVID-19 Related Business Interruption Claims, Coverage Issues, Disputes and Litigation

Summer National Meeting
Consumer Liaison Committee
August 14th, 2020

Amy Bach, Co-Founder & Exec. Director

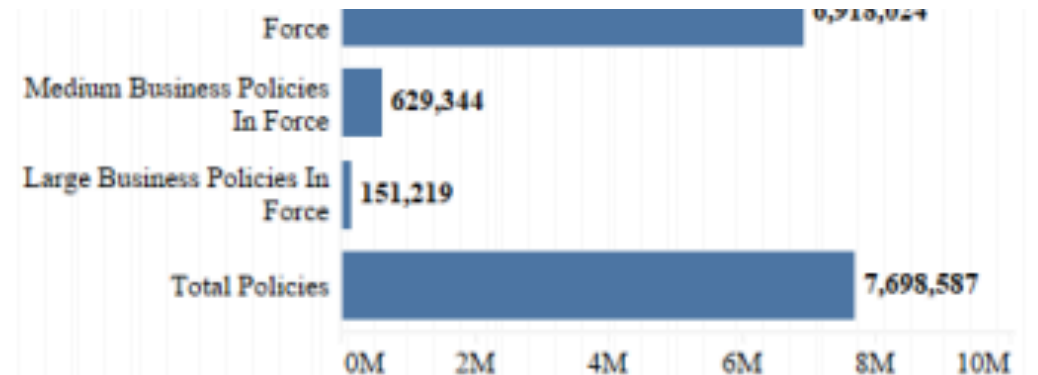
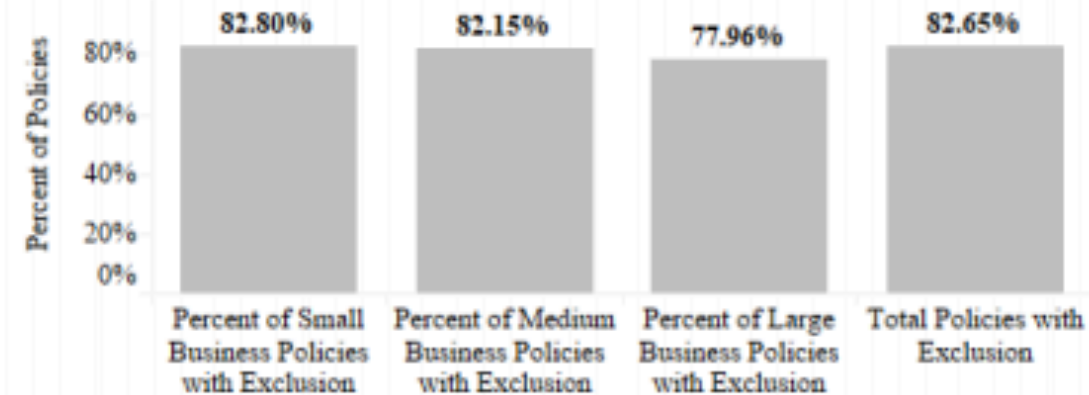
NAIC COVID-19 PROPERTY & CASUALTY INSURANCE BUSINESS INTERRUPTION DATA

CALL PART 1 | PREMIUMS AND POLICY INFORMATION JUNE 2020:

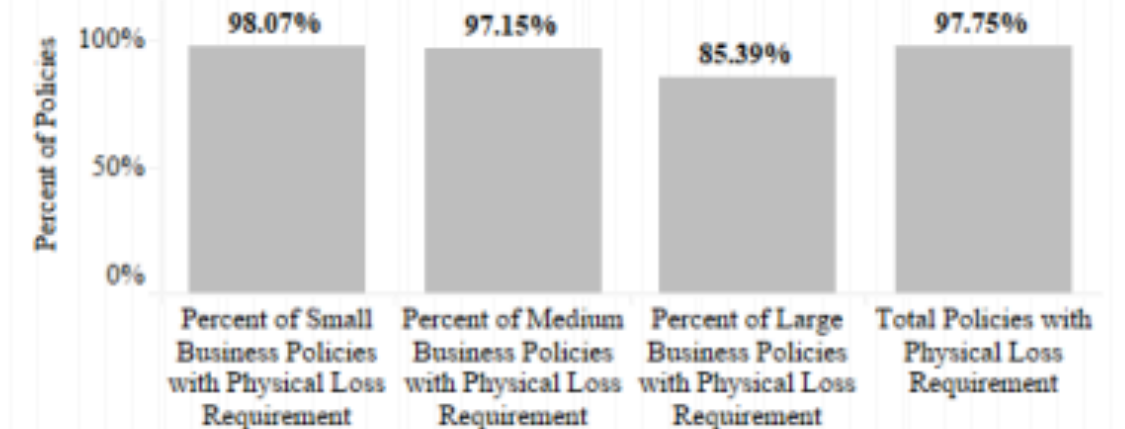
Premium by Business Type National

Policy Type	Total Premium Written for Policies with Business Interr...	Premium Written for Business Interruption Cover...
Businessowners Policy (BOP)	\$9,919,595,690	\$132,350,763
Other than BOP	\$38,814,670,259	\$2,299,392,133
Grand Total	\$48,734,265,949	\$2,431,742,896

Percent of Policies with Exclusion
All Policy Types & Business Sizes



Percent of Policies with Physical Loss Requirement
All Policy Types & Business Sizes



Business Interruption Coverage Questions

- Do forced closure orders, infiltration of insured premises and/or imminent risk of grave harm meet the common requirement of “direct physical loss of or damage to” insured property?
- Are losses due to mandatory closure covered under “Civil Authority”?
- Direct physical loss “to” vs. “of” (loss of use = loss of, not to)

- Loss projections/Losses in progress = Speculative/Unknown
- Trillion \$ loss projections, solvency fears = Speculative/Unknown
- # of actual claims filed = NAIC data calls, Volume of litigation
- Regulators reminded insurers of the duty to investigate
- # of claims accepted/being processed = Unknown
- # of claims denied = “Most”/Unknown
- At least 16 Motions to Dismiss fully briefed
- Litigation outcomes/forums (MDL, State, Federal) = Unknown
- Legislation (Federal/State) = PRIA, etc., HR 7412, Presumptions

Small businesses bearing the brunt

- Many (most?) small businesses, especially restaurants, bars, concert venues that are mandatorily closed by public safety orders, don't have B.I. coverage or have B.I. coverage w/virus exclusion
- Some Higher Ed Institutions have coverage for losses related to communicable diseases
- Some large businesses have BI coverage w/out virus exclusion



YouTube

trump business interruption insurance

LIVE

THE WHITE HOUSE
WASHINGTON

I would like to see the insurance
companies pay

C-SPAN

CORONAVIRUS RESPONSE



1:22 / 1:53



Q 1 and 2 results for one insurer:

Legal expenses defending BI claims cost the company about \$19 million, it reported.

The company posted a \$41 million underwriting loss, compared with a \$48 million profit, which Johnston attributed to \$231 million of catastrophe- and \$65 million of pandemic-related losses and expenses (Best's News, July 27, 2020)

Second-quarter net income more than doubled to \$909 million in the second quarter after the company recognized an \$825 million increase in the fair value of equity securities held.

Source: Best's Insurance News & Analysis - July 28, 2020

In 2003...

- Mandarin Oriental hotels in Hong Kong, Malaysia, Singapore and Thailand all lost business due to cancellations and reduced local food and beverage sales stemming from the SARS outbreak
- Mandarin Oriental International Ltd. Received **\$16 million** from its insurers to pay for business interruption losses suffered by the group's hotels in Asia as a result of the severe acute respiratory syndrome outbreak.¹

1. <https://www.businessinsurance.com/article/20031102/story/100013638/hotel-chain-to-get-payout-for-sars-related-losses#>

Hotel chain to get payout for SARS-related losses

Gavin Souter

November 02, 2003

SHARE

HONG KONG-Mandarin Oriental International Ltd. will receive \$16 million from its insurers to pay for business interruption losses suffered by the group's hotels in Asia as a result of the severe acute respiratory syndrome outbreak.

Mandarin Oriental hotels in Hong Kong, Malaysia, Singapore and Thailand all lost business due to cancellations and reduced local food and beverage sales stemming from the SARS outbreak, a Mandarin Oriental spokeswoman in London said.



More than \$1 billion per week.
That's how much workplace injuries cost U.S. businesses.
Discover the top causes.

[See the top 10 >>](#)

The Hong Kong-based hotel group has received a \$2.5 million interim payment from its insurers, led by AIG Europe Ltd., a London-based unit of American International Group Inc. The company will receive an additional \$13.5 million from its insurers.

The spokeswoman would not disclose the amount of the claim Mandarin Oriental submitted but said that the hotel group was "very satisfied" with the settlement.

Although infectious diseases were covered in the company's business interruption policy last year, "it was not possible to maintain the same scope of cover when the insurance policies were renewed on July 1.

Questions:

- What were regulators told by insurers at the time they added the 2006 ISO virus exclusion?
- If insurers paid out on SARS claims – shouldn't there have been a rate decrease when the virus exclusion was adopted?
- Claims that pandemic losses were “never covered” are contradicted by the fact that SARS claims were paid

Food for thought:

- What were business policyholders told when their policies renewed with the exclusion added? No rate impact seems to have been associated with the exclusion.
- Most policies don't mention "pandemic" and closures due to public safety orders are matters of first impression
- Novel Coronavirus = a new coronavirus that has not been previously identified. The virus causing coronavirus disease 2019 (COVID-19), is not the same as the coronaviruses that commonly circulate among humans and cause mild illness, like the common cold. www.cdc.gov Jul 15, 2020

Current Complaint Trends

www.uphelp.org/COVID

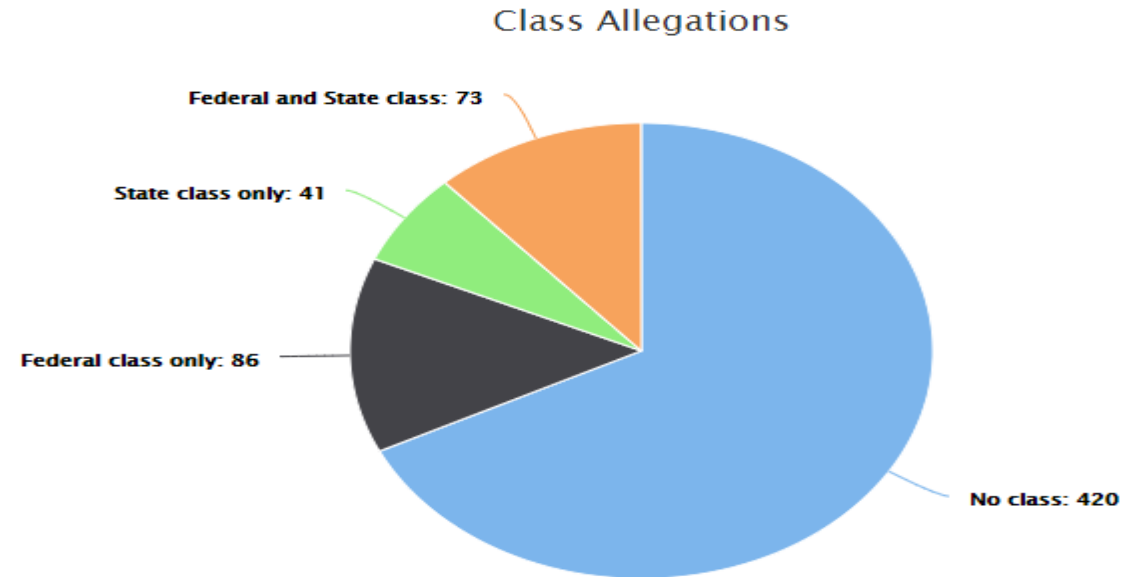
- Covid Coverage Litigation Tracker
- Weekly filing peaked on the week of 5/4/20
- Most frequent coverage sought
 1. Business Income
 2. Civil Authority
 3. Extra Expense
- Most Frequent Ins. Co. (Cases)
 1. Sentinel Insurance Co. (54)
 2. Cincinnati Insurance Co. (46)
 3. Hartford Financial Services Group (32)

<https://cclt.law.upenn.edu/> (7/9/20)

LAWSUITS ▾

Penn Law

- Covid Coverage Litigation Tracker



Parallels w/the Pollution Exclusion (Regulatory Estoppel Argument)

The New Jersey Supreme Court in *Morton Int'l. Inc. v. General Acc. Ins. Co. of Am.*, 629 A.2d 831, 852-53 (N.J. 1993) determined that the insurance industry, through its agents, predecessors to ISO, represented to state insurance regulators in 1970 that the “sudden and accidental” polluters exclusion merely clarified pre-existing insurance coverage.

The Supreme Court found that the insurance industry had failed to disclose its intent to restrict coverage for gradual pollution damage. The court determined that, “[h]aving profited from that nondisclosure by maintaining pre-existing rates for substantially-reduced coverage, the industry justly should be required to bear the burden of its omission by providing coverage at a level consistent with its representations to regulatory authorities.” (emphasis added).

The Morton Court:

- Found the “sudden and accidental” pollution exclusion to be unambiguous, and that it would have applied
- Barred the insurance industry from relying upon the exclusion, because they misrepresented the effect of the exclusion to regulators (to avoid a rate reduction)
- Considered representations by ISO predecessors to any regulator in any state: because ISO binds its members and the language is the same in each state, so a misrepresentation to the New York regulator should bar ISO members seeking to enforce language in Alabama
- ISO language is standard form, sold on a take-it-or-leave it basis, so the only negotiations that are relevant are between ISO and regulators

Questions? Comments?

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