



# Business Interruption Policies and Claims

Summer National Meeting  
Property and Casualty Insurance (C)Committee  
August 12<sup>th</sup>, 2020

Amy Bach, Co-Founder & Exec. Director

# Bottom line re: BI coverage

- Does policy cover losses due to business interruption?
- Do forced closure, loss of use, infiltration of insured premises or imminent risk of grave harm constitute “direct physical loss of or damage to” insured property? Loss OF or Loss TO
- Do losses due to mandatory closure qualify for typical 30 days of coverage under “Civil Authority” where the physical loss requirement must be met?

# Need to balance:

- Indemnity in case of loss = purpose of insurance
- Protecting insurer solvency/profitability
- Policyholders' reasonable expectations/need for coverage
- Insurer candor to regulators and policyholders re: the impact of language changes that reduce coverage
- Effective notice of reduction of coverage when not accompanied by premium reductions that alert customers
- Insurer superior knowledge of risk/the power of exclusions

# Coverage battle lines drawn early

- “Most insurance policies were not designed to provide coverage against communicable diseases such as COVID-19.”
  - *Insurance Trade Group Letter to U.S. Congress, March 2020*
- “[R]oughly 80% of commercial policies are silent or vulnerable on communicable disease coverage.”
  - *Chris Cheatham, CEO of Risk Genius.*
- “There may be exclusions, but there may very well be different interpretations.”
  - Stephan Holzberger, chief rating officer, AM Best



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I would like to see the insurance companies pay

C-SPAN

CORONAVIRUS RESPONSE

- Trillion \$ loss projections, solvency fears = Speculative/Unknown
- # of actual claims filed = NAIC data calls, Volume of litigation
- Regulators reminding insurers of the duty to investigate
- Regulatory estoppel arguments are being advanced
- # of claims denied = “Most”/Unknown
- 2 Court rulings to date both focused on physical damage
- Legislation (Federal/State) = PRIA, etc., HR 7412, Presumptions

# Known numbers vs. projections:

Reported insured losses and reserve setting related to the COVID-19 coronavirus pandemic have now reached \$20.5 billion *Source:*

[www.artemis.bm/news/covid-19-insured-loss-reports-reach-20-5bn/](http://www.artemis.bm/news/covid-19-insured-loss-reports-reach-20-5bn/)

July 27, 2020

# 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 requiring loss of or physical damage to property.
- Some Higher Ed Institutions have coverage for losses related to communicable diseases
- Some large businesses have BI coverage w/out virus exclusion



# 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*

# 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

## 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.<sup>1</sup>

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.



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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.

## What were business policyholders told when their policies renewed with the ISO virus exclusion added?

- Were there rate decreases 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](http://www.cdc.gov) Jul 15, 2020

State: California First Filing Company: Civic Property and Casualty Company, ...  
 TOI/Sub-TOI: 05.0 CMP Liability and Non-Liability/05.0002 Businessowners  
 Product Name: Businessowners  
 Project Name/Number: Exclusion of Loss Due to Virus or Bacteria/J-CA-2007-BP-F

## Response Letter

Response Letter Status Submitted to State  
 Response Letter Date 03/16/2007  
 Submitted Date 03/16/2007

Dear Richard Patterson,

**Introduction:**

**Response 1**

**Comments:**

Hi Richard,

CA-FA has been revised to accurately reflect that this is not a restriction of coverage, but it is actually just a clarification of coverage. As such, there is no anticipated annualized premium level impact.

Sorry for any inconvenience this may have caused you. If you have any further questions please give me a call at (805) 306-6517.

Thank you,

Bernice Diaz

**Changed Items:**

Supporting Document Schedule Item Changes	
<b>Satisfied - Item:</b>	CA-FA
<b>Comments:</b>	Attached is the CA-FA requested.
<b>Attachment(s):</b>	CAFA.pdf CA-FA.rev.pdf
<i>Previous Version</i>	
<b>Satisfied - Item:</b>	CA-FA
<b>Comments:</b>	Attached is the CA-FA requested.
<b>Attachment(s):</b>	CAFA.pdf

# Company F Rate Filing

## Resources

Disaster Recovery Help

Claim Guidance Library

Buying Tips

State by State

Amicus Library

Deals and Discounts

## What people say about UP

"I highly recommend bringing United Policyholders into your community. My only regret is that we didn't

## COVID Loss Recovery Initiative



When events cause people and businesses to suffer serious and costly losses and insurance benefits become critically important to recovery, United Policyholders provides guidance, advocacy support and information to facilitate fair claim payouts. Our goal is to help every person and entity that has invested in buying insurance get the full value of that investment and recover all benefits owed after adversity has struck.

Official shutdown and shelter-in-place orders due to the COVID-19 pandemic have caused crippling financial losses for businesses throughout the nation. Insurance benefits will make or break many businesses' ability to resume operations and recover. United Policyholders established this library

# Filed lawsuits, for more info see [www.uphelp.org/COVID](http://www.uphelp.org/COVID)

- Covid Coverage Litigation Tracker

<https://cclt.law.upenn.edu/> (7/31/20)

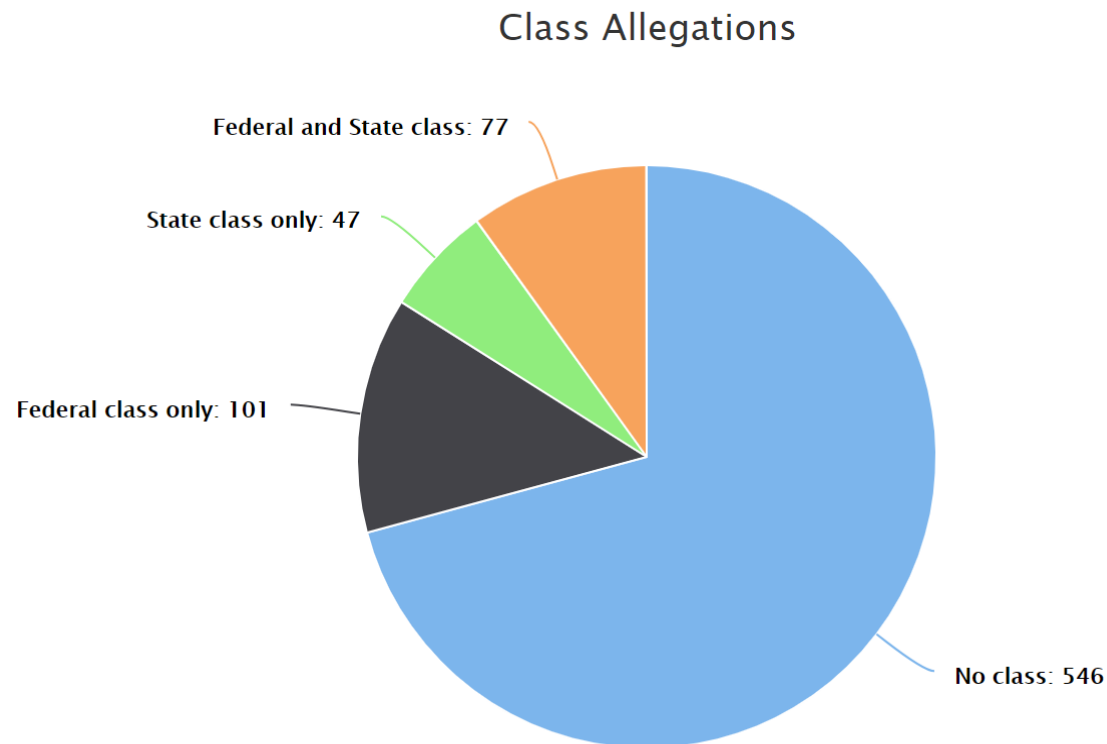
- Weekly filing peaked on the week of 5/4/20

- Most frequent coverage sought

1. Business Income
2. Extra Expense
3. Civil Authority

- Most Frequent Ins. Co. (Cases)

1. Hartford Financial Services Group (125)
2. Cincinnati Financial Corporation (68)
3. Travelers Companies, Inc. (44)



# 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

# Federal Legislation – H.R. 7412

- **To establish a temporary voluntary program for support of insurers providing business interruption insurance coverage during the COVID-19 pandemic, and for other purposes**
- Goals - Establish a program that ensures:
  - “Carriers that sold policies that cover business interruption losses for COVID-19 do not receive any Federal windfall”; and
  - “Carriers that sold policies that expressly exclude coverage for a virus or pandemic for COVID-19 can avoid costly litigation with policyholders, and policyholders may receive policy benefits to compensate for government shutdown and business interruption”
- Relief Program
  - Voluntary insurer participation
  - Eligible policies:
    - BI coverage that expressly include coverage for losses during any period of time that any civil authority shutdown as a result of COVID-19 pandemic is in effect; and
    - Expressly exclude coverage for a “**virus**”
  - Reimbursement for payment of claims

# Questions? Comments?

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