



Business Interruption claims and COVID-19

By the CILA Business Interruption Special Interest Group

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This paper has been very kindly put together by the CILA Business Interruption SIG Committee. As Executive Director of the CILA I am most indebted to the amazing commitment of those members who have in this period of considerable pressure given time to support other members. This document of course comes with all our usual caveats (as provided on our website). In such a (hopefully) unique set of circumstances our members will understand the need to seek appropriate guidance and confer with all interested parties. CILA members will also know that no two policies or circumstances are identical. Thank you again to the BI SIG to whom we are so indebted.

Malcolm Hyde, Executive Director

Introduction and purpose

Coronavirus ('Covid-19') has spread aggressively from Wuhan, China, to every continent except Antarctica since January.

Initially in the UK, in January, suppliers' extensions were being considered, albeit most policies require damage to property (as opposed to the absence of people) as the trigger for cover.

This disease is now here, and the UK government has taken a number of emergency actions and initiated steps to support businesses that have been affected. In most cases businesses have been forced to close on government instruction.

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The purpose of this paper is to highlight some of the areas which members may wish to consider in conjunction with their instructing insurers and/or their insured clients. These actions and instructions will be especially necessary given statements by the government and the press to the effect that losses caused by Coronavirus will be covered. In most cases they will not.

Existing and ongoing BI losses

Members dealing with business interruption losses resulting from insured perils where cover is already engaged and where the indemnity period is forecast to stretch into 2020 (and maybe beyond) should immediately review the situation and the application of the Other Circumstances clause on the loss estimates.

While many sectors will be affected, those members dealing with losses in the hospitality and leisure industries will need to review wordings and in many cases engage with the policyholder to explain why loss modelling that may have been previously agreed for 2019 will now need to be substantially revised for 2020.

It is important that these discussions occur quickly so that businesses that need to apply for government backed emergency loans and funding do so without delay. Policyholders who carry on in the belief that their BI losses will be met in full because their loss predated the arrival of Covid-19 or because they believe statements made by the government and the Mayor of London and do not apply for emergency funding will be left without funds and will quickly cease to exist.

Coronavirus – Damage at the premises

It might be difficult for any insured party to sustain an argument that Damage has occurred at their premises due to Coronavirus.

Whilst the presence of Coronavirus, confirmed by swab testing, requiring subsequent cleaning, would likely constitute Damage, closure periods would be short and BI losses modest (we understand that the virus can only survive for 48 hours outside a host).





In practice, such claims could be problematic to deal with:

- Costs of cleaning and the impact of short closure periods are likely to be submitted as a fait accompli, and the opportunity to establish evidence may have passed;
- Swab testing capacity is likely to be highly insufficient even where the opportunity to test remains.

As notifications and claims are being received it is clear that they mainly relate to the following extensions rather than Damage at the premises.

BI Extensions for Notifiable Disease and Act of a Competent Authority

Members are reminded, as ever, to review precise wordings.

The peril of 'Notifiable Disease' can be included as a non damage extension and is particularly relevant to policyholders in the hospitality and leisure sectors. Some extensions include loss in consequence of any occurrence of a Notifiable Disease at the Premises or within 25 miles of the premises, either as part of the Notifiable Disease extension or as part of a Loss of Attraction extension.

Some insurers list the diseases that are actually covered, some list those that are excluded.

Act of a Competent Authority extends the application of the denial/hindrance of access extension.

Maximum indemnity periods are likely to be 12 months or less.

The causation test still needs to be applied. Just because there has been an outbreak within the specified distance in the policy does not mean that the policyholder's BI loss flows from that.

The impact of the lockdown applying in the UK from Monday 23rd March is currently being considered by insurers and adjusters are strongly advised to take their instructions.

Other points to note are as follows:-

- Imprecisely defined terms may require clarification with Insurers:
 - 'Vicinity' in the case of denial of access, act of competent authority, and loss of attraction (where defined this is usually 1 mile)
 - Premises - the unit occupied in a shopping centre or the whole mall?





- Act of competent authority usually requires prevention (not just hindrance) of access;
- Notifiable disease covers sometimes list the diseases covered, and Coronavirus is unlikely to be on such a list.

Final Observations

The judgements in both the New World Harbourview and Orient Express Hotel cases confirmed that the other circumstances clause should respond to any wider impact of the same peril that affected the Premises.

Only the exacerbation of loss caused by a covered trigger would fall for consideration. BI SIG members are particularly encouraged to read the New World Harbourview judgement in this respect.

Members may also wish to note the UK government observations on commercial insurance and COVID-19 claims: [gov.uk-guidance-to-employers-and-businesses-about-covid-19](https://www.gov.uk/guidance-to-employers-and-businesses-about-covid-19)

For government guidance on all measures being taken to support businesses please go to www.gov.uk

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