

Ensuring Insurance Amidst the COVID-19 Crisis

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We are in the midst of a global crisis caused by COVID-19 and resulting government actions affecting people and businesses all over the world. Daily life is nearly unrecognizable. No more schooldays. No more eating out. Gyms, theaters, bars, and courthouses closed. And for those of you who still know where to find nightclubs in Orange County, that is no longer an option either. Yet it is not just individuals who are suffering in their homes; many businesses are suffering insurmountable losses that may inevitably cause some to go out of business altogether.

But there may be some light at the end of this tunnel. Companies whose business has been impacted by COVID-19 may finally have recourse through that insurance they have been paying towards for years. This article is intended to help Orange County companies, as they re-arrange their business models, to understand the present crisis and steps they are being ordered—and otherwise should—take in response. Among the latter tasks is to evaluate potential insurance coverage for business losses resulting from COVID-19.

IS MY BUSINESS SHUT DOWN? (NAVIGATING THE EVER-CHANGING ORDERS)

On March 17, Orange County's Public Health Officer issued [an order](#) that many businesses understood to require closure. An [amended order](#) promptly issued on March 18 in an effort to clarify. What was originally understood by some to be "shelter in place" order, close analysis of the orders made clear that only a few types of businesses were required to close. Others were ordered (or permitted) to stay open, while others were ordered to cease parts of their operations (e.g., on-site dining) while other operations were still permitted (e.g., take-out, drive-thru, pick-up). Whether or not an actual closure is ordered can be a pivotal fact in determining insurance coverage. It is vital that businesses work together with their specialists (e.g., attorneys) who can help review the current status of government orders and determine exactly what is prohibited.

AM I COVERED? (TIPS ON REVIEWING INSURANCE POLICIES)

If your business has closed, had to modify operations, or otherwise has incurred losses in revenue due to COVID-19 or mandates from the Orange County Health Officer, it is high time to review those unnecessarily long insurance policies you have purchased. STRIKE THAT—better yet, hire someone else with expertise to do it. It could potentially mean the difference between closing your business down or staying above water over these next few months (or longer).

◇ Where to Start

- **Commercial General Liability ("CGL") Policy:** These broad policies provide coverage for general business risks, but commonly require that losses stem from physical harm, damage or loss (i.e., not merely loss of business income). Further, depending on the policy's definition of "bodily injury," to the extent someone becomes infected at your business, a "virus" or "disease" such as COVID-19 may be included such that resulting losses could be covered. They also often contain endorsements or special coverages (such as the ones below) that you may have purchased for additional/special coverage.
- **Business Income/Interruption Coverage:** A special coverage that many businesses have purchased in the last decade includes coverage for losses to business income. Again, depending on the specific language of your policy, losses may need to be tied to property damage.



- **Pandemic Event Coverage:** Some businesses have been fortunate enough to purchase a "Pandemic Event" or similar coverage (often through an endorsement) that explicitly covers losses stemming from a pandemic or resulting government mandates. There are certain common limitations, including that a business be completely "closed." To the extent insurers rely on this limited interpretation to decline coverage, it will likely be the subject of litigation in upcoming years.
- **Environmental/Pollution Coverage:** Depending on a policy's definition of "pollution" or "environmental damage," and whether they include/exclude certain viruses or diseases, losses resulting from COVID-19 might be covered.
- **Event Cancellation Coverage:** The language in such coverage provisions is usually straightforward—it should generally outline the parameters of the covered reasons for cancellation, and may or may not apply to viruses, epidemics, pandemics, or government mandates.

◇ Potential Exclusions

- Keep an eye out for explicit exclusions for viruses, diseases, ordinances of law, government action, or warlike actions. Many policies have them.
- But when interpreting policy language, exclusions are narrowly construed to provide the broadest coverage possible and protect the insured. To the extent an exclusion is ambiguous, you should argue that the exclusion should not apply to the current circumstances.

◇ Duties/Obligations to Keep in Mind

- Be mindful of claim-related deadlines, as many of these special coverages—especially those related to emergency events—have short fuses for making a claim (sometimes as short as 72 hours). **Submit your claim yesterday (i.e., ASAP).**
- You may have more than one policy that applies to your COVID-19 losses. **Submit a claim under all potentially applicable policies.**
- An insurer's duty to defend is triggered the moment a claim is made, and is only excused once the insurer proves that the claim cannot conceivably be covered.¹ Put simply, you "need only show that the underlying claim may fall within policy coverage; the insurer must prove it cannot."² An insurer may be obligated to defend a claim that is later determined not covered.³ **When in doubt, submit a claim and fight for coverage.**

- As you can imagine, insurance companies are currently being inundated with claims. **Be patient and persistent. Check in regularly. Provide updates.** And to the extent an insurance company denies coverage that you think is owed, reach out to your backup team (i.e., your broker and/or lawyers) for reinforcements.

FINAL THOUGHTS

Each policy contains its own coverages, provisions, exclusions, and definitions of defined terms that span to all edges of the arena. While this summary contains some generalizations and high-level guidance, it is not meant to substitute a thorough review of the particular policies you have purchased with those well-versed in insurance coverage. **To determine whether you may have coverage and how to handle a claim with your insurer, get cozy while self-quarantined and delve into your policies—and contact a lawyer, insurance broker, or other key advisors for guidance.**



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¹ *Gray v. Zurich Insurance Co.*, (1966) 65 Cal.2d 263 at p. 276, fn. 15 (insurer's duty excused only when "the third party complaint can, by no conceivable theory, raise a single issue which could bring it within the policy coverage").

² *Montrose Chemical Corp. v. Superior Court* (1993) 6 Cal.4th 287, 299.

³ *Id.* at 300 (noting that "the duty to defend is broader than the duty to indemnify").