

**Facing the  
Unimaginable:  
Are You Insured for  
Business Disruption  
During a Pandemic?**



**SOBEL CO**

# Business Income Insuring Agreement in the Business Income and Extra Expense Coverage Form

We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". **The "suspension" must be caused by direct physical loss of or damage to property at premises which are described in the Declarations** and for which a Business Income Limit Of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of such premises.

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of a building, your premises means:

- (a) The portion of the building which you rent, lease or occupy; and
- (b) The area within 100 feet of the building or within 100 feet of the premises described in the Declarations, whichever distance is greater (with respect to loss of or damage to personal property in the open or personal property in a vehicle); and
- (c) Any area within the building or at the described premises, if that area services, or is used to gain access to, the portion of the building which you rent, lease or occupy.



# Chubb Faces COVID-19 Business Interruption Suits

Restaurants in Florida and New Jersey filed class-action lawsuits against Chubb Ltd. in federal court on Monday seeking coverage for coronavirus-related lost business income.

The lawsuits follow a [wave a legal action](#) by numerous small businesses seeking declaratory rulings that their business interruption coverage is triggered by government-mandated shutdowns. Several of the suits also seek class-action status. More recently, Travelers Cos. Inc. [hit back](#) against one of its policyholders Monday with a countersuit seeking a ruling that coverage is barred.

In the New Jersey case against Chubb, *Truhaven Enterprises Inc. d/b/a Fiorino Ristorante v. Chubb Ltd.*, the Summit, New Jersey-based restaurant notes that its policy has an exclusion for loss or damage caused by a virus or bacteria. It argues, however, that the loss of use of its property was caused by a compulsory closure, which should constitute a direct physical loss that triggers business interruption coverage.

“If Chubb had wished to exclude from coverage as ‘physical loss or damage’ loss of use of property that has not been physically altered, it could have used explicit language stating such a definition of ‘physical loss or damage,’” court papers say.

In the Florida case, *Cafe International Holding Co. LLC v Chubb Ltd.*, the owner of the IT Italy restaurant in Fort Lauderdale, Florida, said it had a policy with a Chubb surplus lines unit Westchester Surplus Lines Insurance Co. that does not include the Insurance Services Office Inc. virus exclusion, which was introduced in 2006 and is common in property policies.

The policy “does not contain any exclusion which would apply to allow Defendants to deny coverage for losses caused by COVID-19 and related actions of civil authorities taken in response to COVID-19,” the suit states. “Accordingly, because the Policy is an all-risk policy and does not specifically exclude the losses that Plaintiff has suffered, those losses are covered.”

A Chubb spokesman said the insurer does not comment on pending legal matters.  
*More insurance and risk management news on the coronavirus crisis [here](#).*



# ISO Commercial Property Forms and Endorsements: Exclusion of Loss Due to Virus or Bacteria (CP 0140)

This state exception endorsement is in use in a majority of states. It excludes loss or damage resulting from "any virus, bacterium, or other micro-organism that induces or is capable of inducing physical distress, illness, or disease." It also deletes the references to bacteria in two provisions found in the causes of loss forms: the Group 1 exclusion of fungus, wet or dry rot and bacteria; and the additional coverage for fungus, wet or dry rot, and bacteria. This has the effect of eliminating the limited coverage that would otherwise apply under the fungus additional coverage for loss or damage resulting from bacteria. (See the discussion of the fungus additional coverage in the basic and broad causes of loss forms or special causes of loss form.)

The text of the endorsement specifies that this exclusion of loss from virus, bacteria, or other disease causing microorganism supersedes any exclusion relating to pollutants and that it does not apply to loss or damage from fungus, wet rot or dry rot.

Use of this endorsement is addressed by a *CLM* Division S "additional rule" in the state exception pages for the applicable jurisdictions.

## **EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA**

This endorsement modifies insurance provided under the following:

### COMMERCIAL PROPERTY COVERAGE PART STANDARD PROPERTY POLICY

- The exclusion set forth in Paragraph B. applies to all coverage under all forms and endorsements that comprise this Coverage Part or Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.
- exclusion does not apply to loss or damage caused by or resulting from "fungus", wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.
- With respect to any loss or damage subject to the exclusion in Paragraph B., such exclusion supersedes any exclusion relating to "pollutants".
- The following provisions in this Coverage Part or Policy are hereby amended to remove reference to bacteria:
  - Exclusion of "Fungus", Wet Rot, Dry Rot And Bacteria; and
  - Additional Coverage - Limited Coverage for "Fungus", Wet Rot, Dry Rot And Bacteria, including any endorsement increasing the scope or amount of coverage.



# Pennsylvania Supreme Court Deals Potential Blow to Insurance Carriers' Basis For Denial of Business Income Claims

The Court found that COVID-19 was no different than the other listed natural disasters in that they all involve “substantial damage to property, hardship, suffering or possible loss of life.” The key phrase here is “**damage to property.**” The Court found that because the virus is spread from person-to-person contact, has an incubation period of up to fourteen days and can live on surfaces for up to four days, any location, including an individual business, is within a disaster area and is thus damaged. Additionally, the Court rejected the argument that the actual presence of the disease at a specific location was required before it could be shutdown, thus holding that all properties were damaged because of the manner in which the disease spreads. In enforcing the Governor’s authority, the Court held that the “COVID-19 pandemic is, by all definitions, a natural disaster and a catastrophe of massive proportions.” Accordingly, the Pennsylvania Executive Order, like other State’s orders, is a declaration that business property has been damaged and is unsafe due to the Coronavirus.



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**More Information:**

For up-to-date information, articles, FAQs, and a directory of helpful websites, phone numbers, and hotlines regarding the Coronavirus, please visit our COVID-19 Resources webpage.

<https://sobelcollc.com/covid-19-resources>

**Email your questions to [covid-19@sobelcollc.com](mailto:covid-19@sobelcollc.com)**

