

How To Make An Insurance Claim For Business Interruption

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If a closed business wants to claim under its business interruption insurance, it needs to jump through the right hoops--carefully.

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Businesses large and small, including particularly retail tenants, hotels, and theaters (as well as their support services) have seen their revenue dramatically interrupted because of Covid shutdowns. But they still have to pay many of their operating costs, such as rent and utilities. So the owners of those businesses have sometimes tried to file claims under the business interruption element of their property insurance policies. Insurance companies have generally rejected those claims. The courts have usually agreed, but not always.

A successful business interruption insurance claim will depend, first, on the words of the particular policy and the scope of coverage. Sometimes a business owner will get lucky.

For example, if a policy provides coverage against loss of access, and a governmental order required the property owner to close off access, then the business might have a claim. Likewise if the policy had unusually broad coverage for hazards to human health.

Policyholders have sometimes won by arguing that the coronavirus constituted some form of physical invasion, causing physical damage to the space. In recent test case litigation in the U.K., policyholders occasionally prevailed, again based on the specific wording of policies.

The history to date makes it clear that a successful business interruption insurance claim won't necessarily be easy to assert or assured of success. But enough cases have turned out favorably to the insured that perhaps it's worth a shot.

If a business owner wants to try to make a business interruption claim, they need to approach the process with the same care, diligence, and planning that they would for any other insurance claim, particularly one that might fall in a gray area. My friend Lennie Morgan, an independent insurance adviser at www.cpgstrategy.com, gave me a few suggestions for any business owner contemplating a business interruption claim.

First, read the policy. What language in the policy might support the claim? How can the insured sculpt a business interruption claim to make the strongest possible argument that it qualifies for coverage? The successful business interruption claims described earlier in this article begin to offer a roadmap. The policy may also cover actions of "civil authority" in a way that could support a claim. Does the policy have any language that might cover a loss that cannot be physically seen? It's worth having counsel or an insurance adviser take a look at successful claims to date to see how best to frame this particular claim.

Second, pay close attention to deadlines and filing requirements. Policies often require claims to be filed within a relatively short time after a loss. And the claim needs to be submitted on a particular form, often with specific accompanying information and documents. It's not enough to have a nice chat with the insurance broker. Again, read the policy. Do exactly what it requires. If the broker will get involved in submission of the claim, make sure the carrier acknowledges receipt of the claim.

Third, plan ahead to proving the amount of business lost as a result of the business interruption. This will require collecting and organizing records and other information. Ideally, it will happen during the period while the business suffers its losses, while memories and documentation are fresh, as opposed to being reconstructed many months after the fact. A successful insurance claim requires solid evidence of how much the insured actually lost.

Fourth, work with someone who knows how the insurance system works and how carriers deal with claims. That can be a lawyer, a consultant, an independent insurance advisor, or an adjuster. Insurance brokers often have the necessary knowledge, but they may have less zeal for the insured than if they were an advocate and strategist looking out solely for the insured.

The four measures just suggested will certainly help increase the chances of succeeding with a business interruption claim, by denying the carrier some easy grounds on which to reject a claim. Ultimately the likelihood of success remains pretty bleak, though. So a business owner will want to avoid spending too much time and money on an effort that is very likely doomed.



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