



## **Bad Faith Litigation Group/Insurance Law Section**

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# When to File a Claim<sup>1</sup>

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<sup>1</sup> This paper was first presented at AAJ's (formerly the Association of Trial Lawyers of America (ATLA®)) *Pre-Litigation Business Interruption Webcast*, March 2020.

## DETERMINING WHETHER TO FILE A CLAIM

- Interpreting policy language
- Civil authority coverage
- Exclusions for viruses

## CATEGORIES OF POLICIES

### Category 1 – Good Policy

- Virus coverage
- Civil authority coverage

### Category 3 – It has Issues

- Physical Damage Requirement
- Exclusion for Virus
- Silent on Civil Authority

### Category 2 – Silent Policy

- No exclusion for virus
- No exclusion for civil authority

### Category 4 – Less Good Policy

- Physical Damage Requirement
- Exclusion for Virus
- Exclusion for Civil Authority

## WHEN TO FILE A CLAIM

Reviewing the Policy  
Reviewing Correspondence

Step 1

Step 2

Reviewing the Law  
Considering Rules on  
Interpretation

Submitting the Claim for  
Coverage

Step 3

# INSURANCE LAW IS AT ITS HEART CONTRACT LAW

YOU MUST READ THE CONTRACT.

## POLICY FORMS AND ENDORSEMENTS

This section lists the Forms and Endorsements for your policy. Refer to these documents as needed for detailed information concerning your coverage.

FORM NUMBER	TITLE
BP 00 03 07 13	Businessowners Coverage Form
BP 01 06 03 15	Washington Changes
BP 04 60 01 10	Washington Employment - Related Practices Exclusion
BP 04 73 01 06	Washington Changes - Domestic Abuse
BP 05 18 01 15	Washington - Amendment of Terrorism Exclusions
BP 05 23 01 15	Cap On Losses From Certified Acts Of Terrorism
BP 06 12 11 13	Washington Changes - Defense Costs
BP 06 69 01 06	Washington Fungi Or Bacteria Exclusion (Liability)
BP 06 74 07 13	Washington Stop Gap - Employer's Liability Coverage
BP 14 15 07 13	Limited Exclusion - Personal And Advertising Injury - Lawyers
BP 15 04 05 14	Exclusion - Access Or Disclosure Of Confidential Or Personal Information And Data-Related Liability - With Limited Bodily Injury Exception
BP 79 74 07 13	Amendment of Pollution Exclusion (Premises)
BP 79 96 09 16	Businessowners Liability Extension Endorsement
BP 80 51 01 07	Lawyers Professional Liability Exclusion
BP 81 15 03 11	Exclusion - Asbestos
BP 88 04 03 14	Exclusion - Professional Services (Real Estate Agents, Insurance Agents, Travel Agents, Financial Services, Computer Software, Insurance Operations)
BP 88 16 06 09	Business Income Changes - 24 Hour Time Period

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## **TRAP – FORMS AND ENDORSEMENTS LISTED BUT NOT PROVIDED.**



### **SECTION I - PROPERTY**

#### **A. Coverage**

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

■ ■ ■

#### **5. Additional Coverages**

##### **a. Debris Removal**

(1) Subject to Paragraphs (2), (3) and (4), we will pay your ex-

**f. Business Income**

**(1) Business Income**

(a) 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 the described premises. 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 mean:

(i) The portion of the building which you rent, lease or occupy;

■ ■ ■

(b) Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

(3) With respect to the coverage provided in this Additional Coverage, suspension means:

(a) The partial slowdown or complete cessation of your business activities; or

(b) That a part or all of the described premises is rendered untenable, if coverage for Business Income applies.

(4) This Additional Coverage is not subject to the Limits of Insurance of Section I - Property.

■ ■ ■

**CONSIDER – ADDITIONAL EXCLUSIONS/INCLUSION**

covered premises.

**(2) Extended Business Income**

- (a) If the necessary suspension of your "operations" produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:
  - (i) Begins on the date property except finished stock is actually repaired, rebuilt or replaced and "operations" are resumed; and

**i. Civil Authority**

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

**j. Virus Or Bacteria**

- (1) Any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.
- (2) However, the exclusion in Paragraph (1) does not apply to loss or damage caused by or resulting from "fungi", wet rot or dry rot. Such loss or damage is addressed in Exclusion i.
- (3) With respect to any loss or damage subject to the exclusion in Paragraph (1), such exclusion supersedes any exclusion relating to "pollutants".

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**REVIEW EXCLUSIONS CAREFULLY**





THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## WASHINGTON CHANGES

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM  
INFORMATION SECURITY PROTECTION ENDORSEMENT

BUSINESSOWNERS  
BP 06 68 01 06

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## WASHINGTON - FUNGI OR BACTERIA EXCLUSION (LIABILITY)

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

The following provisions are added to **Section II - Liability**:

A. The following exclusion is added to Paragraph B.1., **Exclusions - Applicable To Business Liability Coverage**:

t. **Fungi or Bacteria**

- (1) "Bodily injury", "property damage" or "personal and advertising injury" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents.

- (2) Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

B. The following definition is added to Paragraph F. **Liability And Medical Expenses Definitions**:

1. "Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or by-products produced or released by fungi.

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**CONSIDER – CHANGE IN POLICY DUE TO  
ENDORSEMENTS**

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**PRE-CLAIM NOTICES**

Dear Policyholder,

Thank you for selecting us as your insurance company for your Commercial Businessowners policy. This letter is an explanation of the coverage provided for the loss of business income incurred during a business interruption caused by the coronavirus.

During this uncertain time, the health and well-being of our employees, customers, partners and the communities where we live and work are our primary concern as the coronavirus (COVID-19) pandemic continues to evolve globally.

We continue to be dedicated to servicing our customers, and as this unprecedented situation evolves, we're working diligently to limit disruptions. There is currently no impact to our normal customer service operations.

Please contact your agent or broker directly with any questions.

This Notice does not form a part of your insurance contract. No coverage is provided by this Notice, nor can it be construed to replace any provisions of your policy (including its endorsements). If there is any conflict between this Notice and the policy (including its endorsements), the provisions of the policy (including its endorsements) shall prevail.

This Notice is in response to a request by the State that we send you information about Business Interruption (often referred to as Business Income and/or Extra Expense) and related coverages and to the novel Coronavirus (COVID-19) pandemic.

The following provisions of your policy may affect coverage with respect to a Coronavirus. However, actual determination of coverage depends on the relevant facts and circumstances of each claim. Carefully read your entire policy, including the endorsements attached to your policy. If you have questions, please contact your producer, agent or insurer.

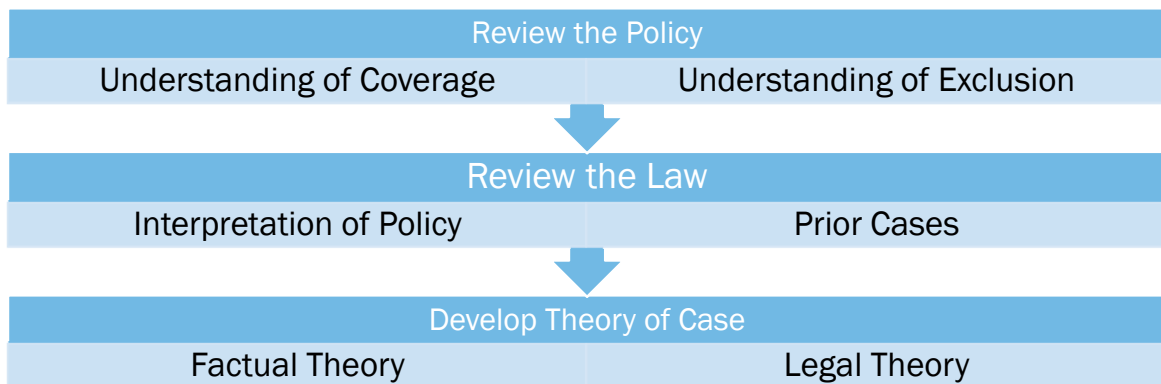
- **Covered Causes Of Loss:** The Covered Causes of Loss are established as direct physical loss unless the loss is excluded or limited under Section I – Property.
- **Virus Or Bacteria Exclusion:** There is no coverage for loss or damage caused directly or indirectly by any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.
- **Additional Coverages:** To the extent that loss or damage is not excluded, the following Additional Coverages are provided:
  - **Business Income:** Coverage is provided 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 or damage to property at the described premises and must be caused by or result from a Covered Cause of Loss. Unless otherwise noted, coverage is provided for Business Income losses that occur within 12 consecutive months from the date of direct physical loss or damage and commences 72-hours after the related loss or damage.
  - **Extra Expense:** Coverage is provided for necessary Extra Expense you incur during the period of restoration that you would not have incurred if there had been no direct physical loss or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. Unless otherwise noted, coverage is provided for Extra Expenses that occur within 12 consecutive months from the date of direct physical loss or damage and commences immediately after the related loss or damage.
  - **Civil Authority:** When a Covered Cause of Loss causes damage to property other than property at the described premises coverage is provided for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises. Unless otherwise noted, coverage for Business Income applies for a period of up to four consecutive weeks and begins 72-hour after the time of the first action of related civil authority. Coverage for Extra Expense begins immediately after the time of the first action of civil authority that prohibits access to your premises lasts for a period of up to four consecutive weeks or when your Civil Authority Business Income ends, whichever is later.

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**THESE NOTICES MAY NOT ACT AS A DENIAL  
YOU MUST MAKE A CLAIM**

[Redacted]

**BEFORE YOU FILE?**



## WORDING YOUR CLAIM FOR COVERAGE

- The specific wording if your client's insurance claim will effect the denials and coverages.
- Submit the claim with supporting documentation regarding prior profits.
- Cooperate with the insurer investigation.
- Give the insurer every opportunity to provide coverage.
- 

**WHEN DO YOU  
FILE A CLAIM?**

WHEN YOU CAN WIN.

# Conducting a Thorough Case Intake<sup>1</sup>

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<sup>1</sup> This paper was first presented at AAJ's (formerly the Association of Trial Lawyers of America (ATLA®)) *Pre-Litigation Business Interruption Webcast*, March 2020.

Business  
Interruption  
Coverage

Civil  
Authority

Dependent  
Property

Government  
Action

## Today's Topics

Assuming the Business Has  
Coverage Would You Take Their  
Case?

How Big Is  
the Business?

Are They  
Closed or  
Unable to  
Operate?

What Are  
Their Losses?

Would This  
Be a Case I  
Would Take If  
They Had  
Coverage?

# INSURANCE 101

Dealing with Property Insurance  
Policies  
TWO TYPES:

- ❖ SPECIFIED PERIL
- ❖ ALL RISK
  - All Risk Coverage – Most policies
    - All Risks are covered unless excluded

## INSURANCE 101: OBTAIN A COPY OF THE FULL POLICY

### ❖Including:

- Declarations Pages
- All Policy Forms
- All Exclusions
  - Exclusions are important because it provides policyholders with little recourse other than to pay extremely high premiums or run the risk of having no coverage in the event a mass disaster occurs.



## INSURANCE 101: BURDEN OF PROOF



Establish Coverage



Establish Exclusions



Establish Exceptions  
to Exclusions



## Specified Peril Coverages

Communicable Disease  
Coverage

Contamination Coverage

Event Cancellation Coverage

Workers Compensation  
Coverage

Political Risk Insurance

Duty to Mitigate

- ❖ 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**.

## All Risk Business Income Coverage

# The BIG Question: Can a Virus Cause Property Loss or Damage?

- ❖ **Two Triggers:**
  - Physical Loss of Property
  - Physical Damage to Property
- ❖ Damage requires physical harm generally evidenced by changes in the physical characteristics that require repair.
- ❖ The presence of a virus on a surface or in the air does change the physical characteristic such that repair is required.
- ❖ Physical loss of property is different than physical damage to property.
- ❖ Cases have found coverage for contamination by hazardous substances, odors, ammonia releases, and packages sent to the wrong places.
- ❖ Pandemics and Shutdowns causing a clear loss of use and function.

## COVERED CAUSES OF LOSS:

## TWO TYPES



OLDER VERSION

### RISKS OF DIRECT PHYSICAL LOSS unless the loss is:

- a. Excluded under Section B., EXCLUSIONS; or
- b. Limited in Paragraph A.4 Limitations that follow.



NEWER VERSION

When Special is shown in the Declarations, Covered Causes of Loss means **DIRECT PHYSICAL LOSS** unless:

- a. The loss is excluded or limited in this policy.



## Does the Policy Define Property Damage?

### ❖ Typical Definitions:

- Loss or damage to tangible property including all loss of use.

## Three Examples of Direct Physical Loss Of

### Gregory Packing, Inc. v. Travelers Prop. Cas. Co. of Am.

- Ammonia released into the building judged as property damage.
- Business closed more than a week to air out premises and Business Interruption policy required to respond.

### Total Intermodal Services v. Travelers Property U.S. D.C., Central District, CA – WL2018 WL3829676

- Great discussion of physical loss and damage (COUCH on Insurance)
- Applied the ordinary meaning to physical loss of.
- Distinguished physical damage to.

### Friends Of Danny DeVito, et al. v. Tom Wolf, Governor (PA) U.S. D.C., Middle District, PA

- Whether Governor has the authority to shut down business in light of COVID-19.
- Pandemic is indistinguishable from other covered casualty events.
- Actual contamination at an insured premises is not required.

# What Not to Do

## ❖ Travelers Casualty Insurance Company of America v. Geragos & Geragos, APC U.S.D.C., Central District, CA

- Good example of what not to do:
  - Held that there is no duty to cover the law firm for business losses during the COVID-19 pandemic because the virus has not caused “physical loss or damage” to the firm’s offices.
  - And while the policy includes an endorsement for civil authority orders, that clause also depends on there being “direct physical loss of or damage to” property nearby, Travelers said, adding that the firm’s loss of access to the courts is the result of government action, not physical loss.

## SPECIAL PROPERTY COVERAGE

### LEAD-IN LANGUAGE (3 TYPES)

#### B. EXCLUSIONS

1. (“Anaconda” Language) We will not pay for loss or damages caused directly or indirectly by any of the following. Such loss or damages is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss . . .
2. (Concurrent Cause) We will not pay for physical loss or physical damage caused by or resulting from: . . .
3. (Ensuing Loss) We will not pay for loss or damage caused by or resulting from any of the following. But if physical loss or physical damage by a Covered Cause of Loss results, we will pay for that resulting physical loss or physical damage . . .
  - b) **Acts or Decisions:** Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.



## CNA LEAD-IN LANGUAGE: “NUCLEAR” EXCLUSION

SB-300456-A  
(Ed. 07/07)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ CAREFULLY.

### CONCURRENT CAUSATION, EARTH MOVEMENT & WATER EXCLUSION CHANGES

This endorsement modifies insurance provided under the following:

#### **BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM**

A. Section **B. EXCLUSIONS** the first paragraph of **B.1.** is deleted in its entirety and replaced by the following:

1. **We will not pay for loss or damage directly or indirectly caused by or resulting from** any of the following regardless of: (a) the causes of the excluded event; or (b) other causes of the loss; or (c) any other causes or events, whether or not insured under this Policy, which may have contributed **concurrently or in any sequence with the excluded event to produce the loss;** or (d) whether the event occurred suddenly or gradually, involved isolated or widespread damage, arose from natural or external forces or acts or omissions of man, **or occurred as a result of any combination of any of the following:** . . .

## VIRUS EXCLUSIONS: 4 TYPES

#### **Berkshire Hathaway Guard Virus or Bacteria Exclusion**

- Virus Or Bacteria
- Any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.
- However, the exclusion in Paragraph 1 does not apply to loss or damage caused by or resulting from “fungi”, wet rot or dry rot. Such loss or damages is addressed in Exclusion i.
- With respect to any loss or damage subject to the exclusion in Paragraph 1, such exclusion supersedes any exclusion relating to pollutants.

#### **AAIS Virus or Bacteria Exclusion**

- Virus or Bacteria
- “We” do not pay for loss, cost, or expense caused by, resulting from, or relating to any virus, bacterium, or other microorganism that causes disease, illness, or physical distress or that is capable of causing disease, illness, or physical distress.

#### **ISO Exclusion of Loss Due to Virus or Bacteria – TILE**

#### **Hartford Limited Fungi, Bacteria or Virus Coverage – TILE**

COMMERCIAL PROPERTY  
ISO CP 01 40 07 06

## EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA

- ❖ This endorsement modifies insurance provided under the following:
  - COMMERCIAL PROPERTY COVERAGE PART STANDARD PROPERTY POLICY
  - A. 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.
  - B. We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease. However, this 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.
  - C. With respect to any loss or damage subject to the exclusion in Paragraph B., such exclusion supersedes any exclusion relating to "pollutants".
  - D. The following provisions in this Coverage Part or Policy are hereby amended to remove reference to bacteria:
    1. Exclusion of "Fungus", Wet Rot, Dry Rot And Bacteria; and
    2. Additional Coverage – Limited Coverage for "Fungus", Wet Rot, Dry Rot, And Bacteria, including any endorsement increasing the scope or amount of coverage.
  - E. The terms of the exclusion in Paragraph B., or the inapplicability of this exclusion to a particular loss, do not serve to create coverage for any loss that would otherwise be excluded under this Coverage Part or Policy.

SPECIAL PROPERTY COVERAGE  
SS 40 93 07 05

## HARTFORD LIMITED FUNGI, BACTERIA OR VIRUS COVERAGE

- ❖ Fungi, Bacteria or Virus Exclusions
  - "Fungi", Wet Rot, Dry Rot, Bacteria And Virus
    - We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss:
      - 1) Presence, growth, proliferations, spread or any activity of "fungi", wet rot, dry rot, bacteria or virus.
      - 2) But if "fungi", wet rot, dry rot, bacteria or virus results in a "specified cause of loss" to Covered Property, we will pay for the loss or damage caused by that "specified cause of loss".
  - Limited Coverage For "Fungi", Wet Rot, Dry Rot, Bacteria and Virus
    - We will pay for loss or damage by "fungi", wet rot, dry rot, bacteria and virus. As used in this Limited Coverage, the term loss or damage means:
      - 1) Direct physical loss or direct physical damage to Covered Property caused by "fungi", wet rot, dry rot, bacteria or virus, including the cost of removal of the "fungi", wet rot, dry rot, bacteria or virus; . . .

## Additional Coverages in All Risk Policies



Civil Authority



Expediting Expense



Claims Preparation



Mitigation or Prevention of Losses and Damages



Dependent Properties



CIVIL  
AUTHORITY:  
AN  
ADDITIONAL  
COVERAGE

# POLICY REQUIREMENTS

## ❖ Civil Authority

- Additional Coverage:
  - Civil Authority, the described premises are premises to which the Coverage Form applies as shown in the Declarations.
- When a **Covered Cause of Loss causes damage to property other than property** at the described premises, we will pay for the actual loss of Business Income you sustain **caused by action of and civil authority that prohibit access** to the described premises provided that both of the following apply:
  - (1) Access to the area on or directly surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
  - (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or contamination of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.
- Civil Authority Coverage for Business Income will begin **72 hours** after the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began and will end:
  - (1) Four consecutive weeks after the date of that action; or
  - (2) When your Civil Authority Coverage for Business Income ends, whichever is later.

## Policy Requirements

01

Must be a covered "cause of loss."  
Excluded by either the pollution exclusion or the CP 01 40.

02

Access to the area must be prohibited. You can still get into the area you just can't go into the building (maybe).

03

Must have been property damage within one mile of insured's premises.

04

The civil authority must prohibit access due to dangerous physical conditions. Is it the property or the people that might lead to a civil authority decree?



# GOVERNMENT ACTION



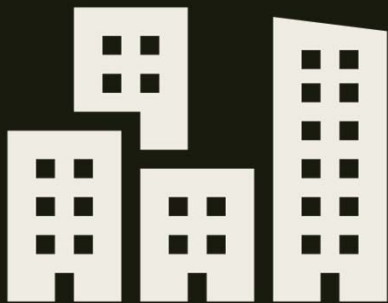
## Orders

❖ Orders entered by government entities intended to trigger insurance coverage:

- **Los Angeles County, CA** – *"It is the public policy and intent of this County that closing certain businesses is for the public welfare, good and benefit and the County recognizes that the interruption of any business will cause loss of and damage to business. Therefore, the County finds and declares that the closure of these businesses is mandated for the public welfare and good and that the physical loss of and damage to businesses is resulting from the shutdown in that these businesses have lost the use of their property and are not functioning as intended."*
- **City of Los Angeles, NAPA, and San Francisco** have all followed suit.
- **NYC Order** – *"WHEREAS, this order is given because of the propensity of the virus to spread person to person and also because the virus physically is causing property loss and damage; . . ."*
- **Oakland, FL Order** – *"SECTION 4. This Order is given because of the propensity of the virus to spread person to person and also because the virus physically is causing property damage due to its proclivity to attach to surfaces for prolonged periods of time."*
- **Pensacola, Panama City, and Key West** have all followed suit.

## Essential Businesses

- ❖ In California, the Essential Workforce has been defined as operations of “essential critical infrastructure sectors” aimed to protect the healthy and well-being of all Californians.
- ❖ These designations were designed to help state, local, and industrial partners as they work to **protect communities**, while ensuring continuity of functions critical to public health and safety, as well as **economic and national security**.



DEPENDENT  
PROPERTY: AN  
ADDITIONAL  
COVERAGE



## Endorsement Language

- ❖ 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 "dependent property" at the premises described in the Schedule caused by or resulting from a Covered Cause of Loss.

## Policy Requirements



Buyers (Recipient Locations) – Can be international



Suppliers (Contributing Locations) – Can be international



Providers (Manufacturing Locations)



Drivers (Leader Locations)

# Dependent Property & Business Interruption



Same limitations as is found in the business income coverage.

Direct physical loss or damage  
Covered cause of loss



Contingent Business Interruption



## A Word About Insurance Agents/Brokers

- ❖ Many times the first line of defense for the insurance industry
- ❖ Motivated by loss/ratios
- ❖ Not authorized to interpret policy
- ❖ Often not qualified to interpret policy language

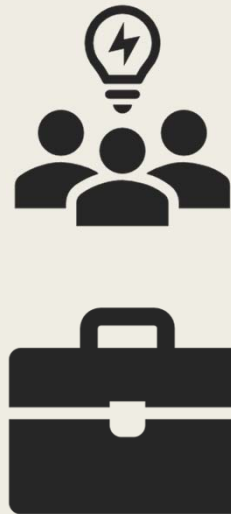
## What Court Will Your Case End Up In?

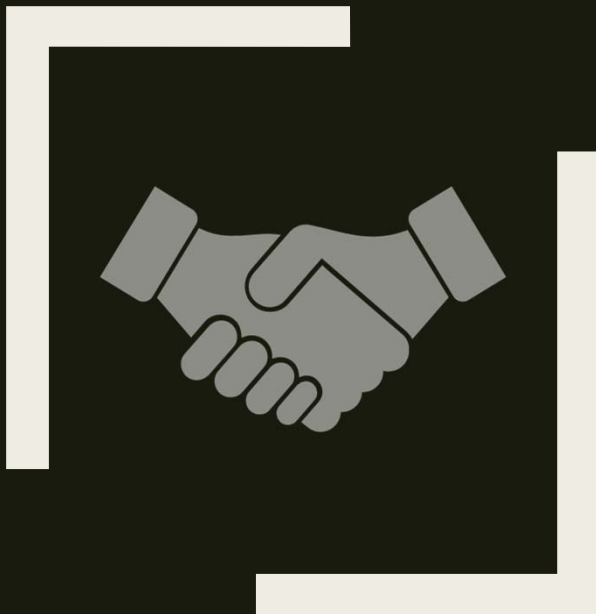
- ❖ State Court v. Federal Court
- ❖ State Insurance Law may apply
- ❖ Know your state's law



## Conclusion

- ❖ Never assume your policy is "standard form." It varies from insurer to insurer.
- ❖ Policies have time limitations which are traps for the unwary.
- ❖ Do not self-report unless and until you know your theory of recovery.
- ❖ Lack of **actual, provable** loss or damage resulting directly from virus bars the application of the exclusion.





THANK YOU



**Kabateck** LLP

# BEFORE YOU FILE: HOW TO IDENTIFY, DEVELOP, AND PREPARE FOR INSURER BAD FAITH PRE-SUIT<sup>1</sup>

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There is no doubt that our chosen profession is laden with stress. However, along with the stress that comes with zealously advocating for our clients, I believe it is important to also try and make our work fun. For me, there is no greater opportunity to do both at the same time than when drafting pre-litigation correspondence to insurance companies and their adjusters outlining the outrageous, unfair, and downright mean things they say about our clients and their cases.

While the third-party case is the bread and butter of many personal injury attorneys' practices, the first-party case is the holy grail—the chance to take on the insurance corporation itself without the veil of a third-party insured providing cover. It is truly David v. Goliath (mixing scriptural metaphors) where you can expose true evil for what it is, and more importantly, where it doesn't belong. My hero Teddy Roosevelt provides the rationale:

Our aim is not to do away with corporations; on the contrary, these big aggregations are an inevitable development of modern industrialism, and the effort to destroy them would be futile unless accomplished in ways that would work the utmost mischief to the entire body politic. We can do nothing of good in the way of regulating and supervising these corporations until we fix clearly in our minds that we are not attacking the corporations, but endeavoring to do away with any evil in them. We are not hostile to them; we are merely determined that they shall be so handled as to subserve the public good. We draw the line against misconduct, not against wealth.

The most important reason we send the letters this paper discusses is to set the hook or lay the foundation for future bad faith litigation, creating a record of evidence that will set the hangman's noose around the insurance company's throat. These letters will trigger responses by the insurance company—responses that will be illuminating and damning—that will be etched in stone in the claim file for you and the jury to see. This provides the insurance company the often-missed opportunity (by plaintiffs' lawyers) to create a written record of the bad faith

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<sup>1</sup> This paper was first presented at AAJ's (formerly the Association of Trial Lawyers of America (ATLA®)) *Annual Conference*, Denver, CO July 2018.

conduct that only existed orally or in the minds of the adjusters prior to the letters, and to further pin down the insurers to their often uncontrollable knee-jerk first reaction to be dismissive, skeptical, and adversarial to your client and their request for benefits. These letters will *create* the evidence you need to succeed on your bad faith claim. And they are not without risk—the “risk” that you may defeat your bad faith claim before it begins by eliciting a policy limits offer. However, as you will see below, it is a risk worth taking.

I will discuss four different ways to create this record, both via letter evidence and claim file evidence, and the purposes behind, and ancillary benefits that flow from, these surgical letters. And the more fun you have with them, the more effective they will be.

## I. Creating the Record of Bad Faith Conduct

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Here in Colorado, the Unfair Claims Practices Act requires that insurers put their claims-related decisions in writing. However, this has never stopped adjusters who let me know “how they really feel” during an un-recorded phone call from memorializing *their* account of the conversation in a seemingly much more professional letter. Therefore, one purpose of pre-litigation letters is to memorialize all the conversations in those heated phone calls so that the letters can be used later on in depositions or even trial. *It is imperative that you draft and send these letters immediately after the conversation while the adjuster’s precise words and phrases are fresh in your memory.*

In one case involving a particularly complicated fact pattern, an adjuster and I had a lengthy conversation about the amount of coverage available with my client’s uninsured motorist policy. The letter memorializing that conversation covered a lot of ground:

- While I appreciate the candor you<sup>2</sup> provided me in our conversation, as well as the apology that you “made a mistake,” I must admit that the more I heard, the more concerned I became. You asked for an additional week to evaluate the claim as your boss was out of town on a fishing trip and could not be bothered. While I respect everyone’s right to take a vacation, surely there are a handful of managers that could provide the authorization to pay the benefits of my client’s policy
- You also admitted that there have been several substantive roundtables on your insured’s case, including at least one that you sat in on a few weeks ago
- You further stated to me that you are primarily concerned with the “estoppel” claim . . . You also revealed to me that you aren’t “too concerned about defeating your breach of

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<sup>2</sup> For the purposes of this paper, all quotations involving a specific insurance company have been replaced with “you” and my client’s name has been removed as well. However, so that the adjuster you are writing to does not somehow feel personally attacked, I always refer to the insurance company in the third-person instead of the adjuster in the second-person.



contract claim and fraudulent inducement claim.” This is disturbing because you are taking a directly adversarial position to its insured

- You also expressed that you now need not to evaluate the claim, but to evaluate its exposure. This runs afoul of every first-party claims-handling standard in America

However, later on, when it came time to testify about this crucial conversation, the insurance executive designated as the FED. R. CIV. P. 30(b)(6) witness vehemently disclaimed that anything other than a simple extension to respond to our demand had been discussed:

Mr. Zaner: Let me bring you to a letter dated June 13th, 2016 that I wrote, my office wrote, directly after that—the conversation was on a Friday; we delivered this to you on a Monday . . . is it your testimony that the substance of the conversation as contained and represented in this letter is false?

A: It’s absolutely my testimony that there’s a lot of mischaracterizations in this letter, yes . . . My recollection of that conversation is I asked for an extension and you granted it.

Had the case gone to trial, the ethical rules may have prevented me from testifying that the adjuster’s account of the conversation was incomplete. However, the letter, which certainly would have been admitted, did the testifying for me. Without its own written account of how the conversation transpired, combined with the immense detail of our own letter, I have little doubt that the jury would not find the insurer’s testimony credible.

Besides providing evidence supporting your client’s version, should the insurance company dispute a phone call, these letters are also useful in capturing some of the more obscene and outrageous things insurance adjusters say about our clients in bad faith—which they would never put in writing.

In one case, an insurance company quite disgustingly attempted to blame my client’s orthopedic injuries on her mental health history:

More disappointingly, you have tried to avoid paying benefits by brazenly highlighting your insured’s mental health history. Aside from the fact that any mental health problems would also fall under the thin skull doctrine, I find it hard to believe that my client’s own insurance company would have the temerity to try and avoid compensating her for her physical injuries by pointing to her very personal and trying struggle with mental health issues. She has courageously lived a difficult life and I find it disappointing, shocking, and frankly shameful that you seek to benefit financially from your insured’s mental health struggles. Clearly you are just looking for reasons, any reason, not to pay on your insured’s claim for benefits. Shame on you. These are not the good hands my client hoped to be in when she purchased your insurance.

In this case, the claim file which was eventually produced actually substantiated this letter as well. However, if there was no mention of the “mental health” argument in the insurer’s claim file, then the correspondence might have been the only evidence of this egregious bad faith conduct.

Another client of mine sustained a traumatic brain injury which affected her life on every level, including in her highly physical job as a nurse. After settling the case for the bodily injury policy limits, we sent a request for underinsured motorist benefits to her insurance company. Instead of fairly evaluating the claim, the insurer offered her an impossible choice—either she could take much less than what she rightfully deserved, or the carrier would make her life miserable by forcing her to attend multiple independent medical examinations (IMEs). In the insurance company’s words, if the client wanted “*big numbers*” than she would have to pay extra for it. I needed to capture this in writing because I knew they would not:

Thank you for putting some of your analysis in writing. However, I am still concerned that you have not put the more inflammatory and pejorative comments you made towards your insured to me over the phone into writing as well. Namely, that if your insured wants “big numbers,” she will have to undergo two IMEs with doctors of your choosing. While you may be entitled to IMEs via your insured’s contract (and your insured is happy to cooperate with her contractual obligations), by threatening to exercise this right if your insured wants “big numbers” (or a fair settlement) suggests your insured is just playing some strange version of a 1990s game show, going to countless doctor appointments and undergoing extensive neuropsychological testing just so she can win “big numbers” in a settlement with her own insurance company; if she wants to win big, according to you, she will have to go through a few more steps and go to doctors of your choosing to win the game. I find your comments not only offensive, but disappointing as you have completely trivialized your insured’s very difficult plight over these past three years.

I honestly believe that once it realized just how bad this phrase (“big numbers”) looked on paper, the carrier realized the error in its ways and the case ended up settling for extra-contractual damages in *pre*-litigation mediation.

In another instance, the insurance company offered our client a “Sophie’s choice” of three clearly biased defense physicians to perform his “independent” medical exam. While my client of course had to comply with his contractual obligations to participate in an IME, we still used this as an opportunity to lay the groundwork for a bad faith claim:

Your insured is disappointed that you only gave him three options for Independent Medical Exam physicians, all of whom were chosen by the insurance company and were surely retained to confirm your perspective on my client’s injuries. I have also had trials against all of these doctors and therefore would be significantly concerned about resulting potential bias. Your insured—and his medical care providers—respectfully disagree with the conclusions of your IME physician. As a result, any offer must include not only all of the medical bills we

have presented but also an amount which adequately takes into account your insured's pain and suffering and other significant noneconomic damages. My client missed out on a lot in life, and even daily activities like light yardwork and chores around the house can leave him writhing in pain for days if he makes a wrong move.

Finally, while there is truly no substitute for attorney-drafted letters, you can also train your support staff on sending letters for more mundane acts of bad faith—such as when the carrier has asked for three extensions and still not given you an offer. Even these quick pieces of correspondence are immensely helpful in showing the overall unreasonable delay:

This letter is regarding the multiple phone calls I have made concerning your response to our settlement demand. As stated in my prior letter, we should have received a response by December 14, 2016. As of January 4, 2017, we still don't have a response to our demand. Please contact me immediately with a response to Ms. Bruno's policy limits demand.

Eventually, everyone in the office will understand that at all times when dealing with our client's own insurance company, we should *always* be thinking about laying the groundwork for a future bad faith lawsuit. It is wonderful when the whole team understands this strategy for each and every case!

A further benefit of sending all of these letters prior to filing the lawsuit is that it will trigger more bad faith behavior by the insurance company. When they read these letters, they will be obligated to create a claim file memorializing the letter *and* the insurance company's response to the letter. If they have failed to memorialize their inflammatory oral comments as of yet into the record—e.g. “big numbers” or blaming your client's mental health for their claimed injuries—the letter will force them to address it in writing in the claim file. If they don't address it, it may look even worse as they are either ignoring their insured's valid concerns or it will look like an admission by silence. If their inflammatory remarks have already been recorded in the claim file, a subsequent letter will force them to dig in and double down on their ridiculous position, especially when their insured has questioned the validity of that position.

## II. Showing the Jury You Gave the Insurer One Last Chance—Or Many Last Chances

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I learned early on from crafty defense lawyers that one go-to defense in bad faith cases will almost always be that the insured did not give the insurer a fair opportunity to settle before filing suit. One adjuster even testified in his deposition that surely the case I was litigating would have settled if I had just “picked up the phone.” I think that this plays into the defense bar's propaganda that plaintiffs—and plaintiffs' lawyers—should not be taken seriously because they are too litigious. For this reason, I strongly recommend sending one—or even better, multiple—“last-chance” letters which remind the insurer of its legal obligations in your jurisdiction and the potential consequences if those legal obligations are not followed. In rare occasions, a simple refresher on the law can actually effectuate a fair settlement.

To this end, I recommend thoroughly researching the hallmark first-party cases in your jurisdiction and putting together a stock paragraph or two in your initial letters to an insurance company. Mine includes the most prescient holdings from our state supreme court:

As you know, you have a heightened duty to ensure that you are not unduly delaying my client's UIM claim or treating him in bad faith. As the Colorado Supreme Court has stated, there is a "special nature" unique to the relationship between an insurer and its own insured. *Cary v. United of Omaha Life Ins. Co.*, 68 P.3d 462, 467 (Colo. 2003). You [owe] a higher duty to my client to ensure that he is treated in good faith. *See, e.g., Goodson v. American Standard Ins. Co. of Wisconsin*, 89 P.3d 409, 416 (Colo. 2004). The reason why my client purchased UIM insurance through you is because he sought "to obtain some measure of financial security and protection against calamity"—in other words, peace of mind that if he ever was in an accident and the at-fault insurance policy was not enough to cover his losses, he could depend on you to make him whole. *Id.* (citing *Travelers Ins. Co. v. Savio*, 706 P.2d 1258, 1272 (Colo. 1985)).

Furthermore, as the Colorado Legislature stated in its "Declaration of Purpose" for the uninsured [and] underinsured motorist statute, the "general assembly is acutely aware of the toll in human suffering and loss of life, limb, and property caused by negligence in the operation of motor vehicles in our state." Therefore, the legislature wanted to ensure that there is "insurance protection against financial loss caused by *negligent financially irresponsible motorists*." C.R.S. § 10-4-609 *et seq.* (emphasis in original). The Colorado Supreme Court echoed the importance of UIM coverage when it held that an individual such as your insured would purchase UIM coverage in order to "protect [himself] from the devastating financial loss that a traffic accident victim can incur." *Aetna Cas. & Sur. Co. v. McMichael*, 906 P.2d 92, 98 (Colo. 1995).

However, as I implied above, I do not want to give the insurer only one "last chance" because I have had many adjusters testify that it took weeks or a month for the letter to actually reach them—by which point we may have already filed suit. The above is, therefore, usually only the first in a series of letters to the insurer. And while I will not cite the same cases in subsequent correspondence, I will certainly refer to my prior citations so that the insurer is reminded on numerous occasions what its legal responsibilities are and the consequences for not fulfilling those responsibilities

Last chance letters should go beyond pointing out the applicable law as well. If an insurer has made a critical error in its claims evaluation, I see no harm in letting them know before filing suit where they went wrong. That way, there can be no question later on that the carrier had simply "misunderstood" or "misinterpreted," for example, a medical record, and had we pointed it out a fair offer would have been made. In these cases, it is important to dig into the records and provide specific citations which contravene the insurance company's assertions:

Respectfully, my client would like to know why you are substituting your own judgment for that of her treating physicians. Every medical provider, including

her surgeon, stated that her shoulder injury (and the surgery which that injury required to repair) was caused by the motor vehicle accident. As only one example of this, on Bates 358 of the medical records we sent you, her surgeon wrote: “In February this year, she was in a MVA *resulting in injury to her right shoulder.*” (Emphasis added). Later, her doctor, on Bates 649, states: “Patient returns to us today. She is 4-1/2 months out from a right shoulder revision arthroscopic posterior stabilization *from a car accident.*” (Emphasis added). These are only a few instances in which your insured’s treatment providers expressly stated that her right shoulder injuries were caused by this crash.

The more detail you can provide in these letters, the less wiggle room an insurance company will have later on in arguing that you didn’t give them enough evidence to pay on the claim.

And as stated before, every time you send one of these letters, the adjustor must read it, digest it, react to it, and record all of this in the claim file (which will later be discoverable). This is an added benefit. In the example directly above, you may later find a claim entry to the effect of “insd claiming injury is related to crash; has medical record supporting same. What is our response? Are there any records to contradict? Send to med review to srch.” This is pure gold—evidence that an insurer is actively trying to find a way to lower a client’s damages.

### III. Showing the Insurer You Mean Business

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The Unfair Claims Practices Act also prohibits an insurer from forcing an insured to file suit just to recover the benefits to which the insured was entitled all along. Despite this, whenever I receive an unreasonably low offer, I cannot help but think that this is a proverbial game of chicken in which the insurer is daring or forcing my client to file suit before fair benefits will be paid.

I don’t want the carrier to think for one second that they are intimidating my client with these offers—they need to understand that *we* are the ones who are in control of the case and that their unreasonably low offer will have massive negative consequences later. Thus, in first-party situations, I try and turn the tables and make it abundantly clear that the insurer is the one that has to make a choice to either: (1) pay the policy limits now, or (2) pay above policy limits later. In these letters my language becomes more forceful:

While I have tried to be respectful of your additional requests for time to evaluate this claim and have complied with each of your requests for further information, I also have to advocate for my client, whose life has been ruined, and defend his rights as your own insured. If we are forced to sue you, I can tell you that the Complaint will undoubtedly include extra-contractual claims for treating my client in bad faith and unduly delaying and denying his claim (a lack of any timely offer, to me, is essentially the same thing as an outright denial).

The language can be even clearer depending on the situation. In my coverage amount dispute case, the insurance company outrageously and at the last moment determined that only

\$100,000.00 as opposed to \$500,000.00 in benefits existed under the policy. As a result, they had to understand the gravity of their decision should the case proceed to litigation:

Because my client would like her full benefits so that she can pay for her next surgery, she will give you one last chance to pay the policy limits by Friday at 5 p.m. This will be the last letter and request. If you fail to do so, we will immediately be initiating litigation for UM benefits, bad faith, and undue delay/denial, and your insured will never be settling for only these policy limits. I find it deeply troubling that when it is time to finally pay her benefits, you have reversed course 180° and, to your own benefit, decide[d] that the policy is only worth \$100,000.00. This is the definition of putting the insurance company's profits over the insured's benefits.

This case later settled for more than 10 times the amount of their offer.

You can also be explicit about the additional claims the insurer will be facing—and therefore the additional financial exposure they are risking—should the policy limits not be tendered pre-suit. Make sure that if these are available in your jurisdiction, you state that you will be seeking exemplary and punitive damages, attorney's fees, interest, and costs *on top* of any consequential damages the jury will award. The reason why is that insurance companies look at cases from a strictly financial standpoint; the more financial risk you demonstrate, the more likely an adjuster will be to pay the policy limits to avoid greater risk down the line:

We will be including a claim for fraudulent inducement in our Complaint as well. In pursuing this claim, we are entitled to and will be seeking attorney's fees, costs, and consequential damages.

You also know that if you unreasonably delay or deny the benefits to which my client is entitled, you may be held responsible for triple damages. The legislators in Colorado passed this law to discourage the very behavior that you are engaging in. If not, you will leave my client no option but to make her file a lawsuit against her own insurer and she will be seeking all damages (treble) provided by statute as well as damages for the stress of having to bring the lawsuit under a common law bad faith claim.

I will be also seeking exemplary damages as much as permitted by law related to egregious behavior. This conduct rises far above the level of bad faith.

Thus, if the policy limits are not tendered by this Friday by 5 p.m., in addition to the claims for relief I noted in my earlier letter from today, we will also be setting forth these claims, as well as any other causes of action which may be applicable to your conduct towards my client.

Of course, it goes without saying that if you say that your client will not settle for only the policy limits should the case proceed to litigation, *you must stick to your word*—there is nothing worse

than an insurance company quickly realizing that your aggressive pre-suit threats are meaningless.

#### IV. Polarizing the Claim

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In *Polarizing the Case*, Rick Friedman urges us to “wrap the malingering defense around the neck of the defense lawyer and strangle him with it.” I believe that this reasoning also applies to an insurance claim as well. For example, what other reason would there be for an insurance company to re-request medical records other than that it is acting in bad faith?

At this point, it would seem duplicative and a waste of time to re-order the very same medical records your insured has already provided to you. Given that you have these records, I can draw only one of two conclusions as the reason for this request: (1) you are unreasonably delaying the evaluation of her claim as some kind of stall tactic; or (2) you believe your insured to have surreptitiously removed individual records from the set of un-redacted records she provided you. With respect to the former, you do realize that my client is entitled to a prompt and fair evaluation of her claim. Ordering records is a lengthy and draconian process that will take several months. Your insured should not have to wait any more time on top of the three months she has already provided you to evaluate her claim.

The other potential impetus—you believe your insured is hiding records from you—is a far more serious and consequential justification. If this is truly your reason for the record request, please advise in writing so we may properly address this meritless accusation.

A letter like this one leaves the insurance company in an impossible situation and will make them look poorly in front of the jury. Of course, they will never *admit* that they think the insured is hiding records or that they are intentionally delaying the claim, but it will certainly look like that to the factfinder. In other words, pre-suit correspondence can take some of the most frustrating aspects of a carrier’s behavior and use it against them in a lethal way.

Your pre-litigation correspondence can also polarize the claim if an insurance company relies on its classic “gap in treatment” defense. At a 30(b)(6) deposition, the insurer will always agree that a first-party claim should not be an adversarial process. And yet, if there is any “gap” in care, insurance companies will always pounce on this as a reason to deny or cut off benefits. We can use this against them as well, however:

This letter is to confirm our conversation we had over the phone on November 18, 2016 where you indicated that your insured’s medical records stated that he had pain indicators of 1 and 0 at the chiropractor, and based on his four-month gap, you are not considering any of his care after the four-month gap related to the car crash. I asked you what your position was, if it was either: (1) your insured was lying about still being hurt from the crash after the 4-month gap, or (2) some other

incident caused his need for the injections, or (3) whether he was just getting the injections for fun. You would not commit to any of the three logical options, instead just simply repeating the same lines about the 0 and 1 pain indicators and any treatment after the 4 months not being related to the crash. At that point, you offered \$500.00.

Polarizing the claim in pre-suit correspondence is yet another powerful way of presenting evidence of bad faith conduct once the case goes to litigation. The case later settled for 80 times that number.

## V. Conclusion

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Whether it's to create the record, give a last chance, show the carrier you are serious, or polarize the claim, well-crafted pre-suit correspondence with insurance companies needs to be an integral part of our practice. And yes, it is likely that if you follow all of these tactics you may end up with a pre-suit policy limits offer. And that's okay. This is the best worst-case scenario and it is a risk that you should take. Your client likely wants their money sooner rather than later (bad faith suits can take years, especially in federal court) and there is no guarantee you will win in court.

However, if the policy limits offer does not materialize, you have won your gamble and you have set the ultimate bad faith hooks—providing your client the very best odds at succeeding on a bad faith claim by creating evidence both in the form of letters and extra claims file material you would not otherwise have. This is how you can achieve the uncommon result and add multiple zeros to those insulting offers. It truly is a win-win gambit.

But it takes time and it takes effort. You can't just file a lawsuit and expect offers forty times the last offer. You have to work for it. And it is hard work. Writing is always hard. But if you aim to have fun with it, and you enjoy the challenge of sticking it to the insurance company, you may find it enjoyable after all. As Teddy Roosevelt also said, "Far and away the best prize that life offers is working hard at work worth doing."



# When to File a Claim<sup>1</sup>

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<sup>1</sup> This paper was first presented at AAJ's (formerly the Association of Trial Lawyers of America (ATLA®)) *Pre-Litigation Business Interruption Webcast*, March 2020.

## DETERMINING WHETHER TO FILE A CLAIM

- Interpreting policy language
- Civil authority coverage
- Exclusions for viruses

## CATEGORIES OF POLICIES

### Category 1 – Good Policy

- Virus coverage
- Civil authority coverage

### Category 3 – It has Issues

- Physical Damage Requirement
- Exclusion for Virus
- Silent on Civil Authority

### Category 2 – Silent Policy

- No exclusion for virus
- No exclusion for civil authority

### Category 4 – Less Good Policy

- Physical Damage Requirement
- Exclusion for Virus
- Exclusion for Civil Authority

## WHEN TO FILE A CLAIM

Reviewing the Policy  
Reviewing Correspondence

Step 1

Step 2

Reviewing the Law  
Considering Rules on  
Interpretation

Submitting the Claim for  
Coverage

Step 3

# INSURANCE LAW IS AT ITS HEART CONTRACT LAW

YOU MUST READ THE CONTRACT.

## POLICY FORMS AND ENDORSEMENTS

This section lists the Forms and Endorsements for your policy. Refer to these documents as needed for detailed information concerning your coverage.

FORM NUMBER	TITLE
BP 00 03 07 13	Businessowners Coverage Form
BP 01 06 03 15	Washington Changes
BP 04 60 01 10	Washington Employment - Related Practices Exclusion
BP 04 73 01 06	Washington Changes - Domestic Abuse
BP 05 18 01 15	Washington - Amendment of Terrorism Exclusions
BP 05 23 01 15	Cap On Losses From Certified Acts Of Terrorism
BP 06 12 11 13	Washington Changes - Defense Costs
BP 06 69 01 06	Washington Fungi Or Bacteria Exclusion (Liability)
BP 06 74 07 13	Washington Stop Gap - Employer's Liability Coverage
BP 14 15 07 13	Limited Exclusion - Personal And Advertising Injury - Lawyers
BP 15 04 05 14	Exclusion - Access Or Disclosure Of Confidential Or Personal Information And Data-Related Liability - With Limited Bodily Injury Exception
BP 79 74 07 13	Amendment of Pollution Exclusion (Premises)
BP 79 96 09 16	Businessowners Liability Extension Endorsement
BP 80 51 01 07	Lawyers Professional Liability Exclusion
BP 81 15 03 11	Exclusion - Asbestos
BP 88 04 03 14	Exclusion - Professional Services (Real Estate Agents, Insurance Agents, Travel Agents, Financial Services, Computer Software, Insurance Operations)
BP 88 16 06 09	Business Income Changes - 24 Hour Time Period

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## **TRAP – FORMS AND ENDORSEMENTS LISTED BUT NOT PROVIDED.**



### **SECTION I - PROPERTY**

#### **A. Coverage**

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

■ ■ ■

#### **5. Additional Coverages**

##### **a. Debris Removal**

(1) Subject to Paragraphs (2), (3) and (4), we will pay your ex-

**f. Business Income**

**(1) Business Income**

(a) 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 the described premises. 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 mean:

(i) The portion of the building which you rent, lease or occupy;

■ ■ ■

(b) Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

(3) With respect to the coverage provided in this Additional Coverage, suspension means:

(a) The partial slowdown or complete cessation of your business activities; or

(b) That a part or all of the described premises is rendered untenable, if coverage for Business Income applies.

(4) This Additional Coverage is not subject to the Limits of Insurance of Section I - Property.

■ ■ ■

**CONSIDER – ADDITIONAL EXCLUSIONS/INCLUSION**

covered premises.

**(2) Extended Business Income**

- (a) If the necessary suspension of your "operations" produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:
  - (i) Begins on the date property except finished stock is actually repaired, rebuilt or replaced and "operations" are resumed; and

**i. Civil Authority**

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

**j. Virus Or Bacteria**

- (1) Any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.
- (2) However, the exclusion in Paragraph (1) does not apply to loss or damage caused by or resulting from "fungi", wet rot or dry rot. Such loss or damage is addressed in Exclusion i.
- (3) With respect to any loss or damage subject to the exclusion in Paragraph (1), such exclusion supersedes any exclusion relating to "pollutants".

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**REVIEW EXCLUSIONS CAREFULLY**



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## WASHINGTON CHANGES

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM  
INFORMATION SECURITY PROTECTION ENDORSEMENT

BUSINESSOWNERS  
BP 06 68 01 06

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## WASHINGTON - FUNGI OR BACTERIA EXCLUSION (LIABILITY)

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

The following provisions are added to **Section II - Liability**:

A. The following exclusion is added to Paragraph B.1., **Exclusions - Applicable To Business Liability Coverage**:

t. **Fungi or Bacteria**

- (1) "Bodily injury", "property damage" or "personal and advertising injury" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents.

- (2) Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

B. The following definition is added to Paragraph F. **Liability And Medical Expenses Definitions**:

1. "Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or by-products produced or released by fungi.



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**CONSIDER – CHANGE IN POLICY DUE TO  
ENDORSEMENTS**

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**PRE-CLAIM NOTICES**

Dear Policyholder,

Thank you for selecting us as your insurance company for your Commercial Businessowners policy. This letter is an explanation of the coverage provided for the loss of business income incurred during a business interruption caused by the coronavirus.

During this uncertain time, the health and well-being of our employees, customers, partners and the communities where we live and work are our primary concern as the coronavirus (COVID-19) pandemic continues to evolve globally.

We continue to be dedicated to servicing our customers, and as this unprecedented situation evolves, we're working diligently to limit disruptions. There is currently no impact to our normal customer service operations.

Please contact your agent or broker directly with any questions.

This Notice does not form a part of your insurance contract. No coverage is provided by this Notice, nor can it be construed to replace any provisions of your policy (including its endorsements). If there is any conflict between this Notice and the policy (including its endorsements), the provisions of the policy (including its endorsements) shall prevail.

This Notice is in response to a request by the State that we send you information about Business Interruption (often referred to as Business Income and/or Extra Expense) and related coverages and to the novel Coronavirus (COVID-19) pandemic.

The following provisions of your policy may affect coverage with respect to a Coronavirus. However, actual determination of coverage depends on the relevant facts and circumstances of each claim. Carefully read your entire policy, including the endorsements attached to your policy. If you have questions, please contact your producer, agent or insurer.

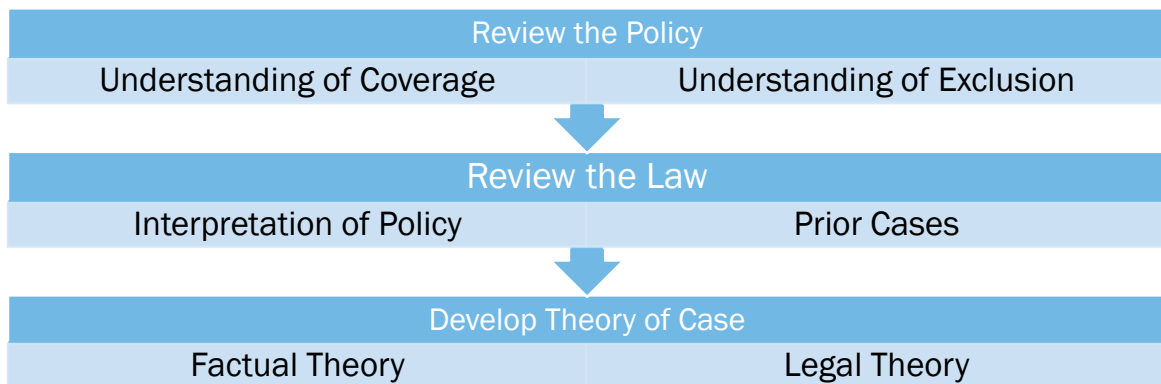
- **Covered Causes Of Loss:** The Covered Causes of Loss are established as direct physical loss unless the loss is excluded or limited under Section I – Property.
- **Virus Or Bacteria Exclusion:** There is no coverage for loss or damage caused directly or indirectly by any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.
- **Additional Coverages:** To the extent that loss or damage is not excluded, the following Additional Coverages are provided:
  - **Business Income:** Coverage is provided 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 or damage to property at the described premises and must be caused by or result from a Covered Cause of Loss. Unless otherwise noted, coverage is provided for Business Income losses that occur within 12 consecutive months from the date of direct physical loss or damage and commences 72-hours after the related loss or damage.
  - **Extra Expense:** Coverage is provided for necessary Extra Expense you incur during the period of restoration that you would not have incurred if there had been no direct physical loss or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. Unless otherwise noted, coverage is provided for Extra Expenses that occur within 12 consecutive months from the date of direct physical loss or damage and commences immediately after the related loss or damage.
  - **Civil Authority:** When a Covered Cause of Loss causes damage to property other than property at the described premises coverage is provided for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises. Unless otherwise noted, coverage for Business Income applies for a period of up to four consecutive weeks and begins 72-hour after the time of the first action of related civil authority. Coverage for Extra Expense begins immediately after the time of the first action of civil authority that prohibits access to your premises lasts for a period of up to four consecutive weeks or when your Civil Authority Business Income ends, whichever is later.

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**THESE NOTICES MAY NOT ACT AS A DENIAL  
YOU MUST MAKE A CLAIM**

[Redacted]

**BEFORE YOU FILE?**



## **WORDING YOUR CLAIM FOR COVERAGE**

- The specific wording if your client's insurance claim will effect the denials and coverages.
- Submit the claim with supporting documentation regarding prior profits.
- Cooperate with the insurer investigation.
- Give the insurer every opportunity to provide coverage.
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**WHEN DO YOU  
FILE A CLAIM?**

WHEN YOU CAN WIN.