



COVID-19 and Business Insurance Claims: 3 Important Questions for Restaurants

Here are answers to three common concerns restaurant owners have grappled with in the past few weeks.

by David Goodman

Among the most tangible disruptions to regular life caused by the coronavirus pandemic is the current prohibition on dining in restaurants. Restaurants play a central role in our communities and are where we celebrate, commiserate, commune and network. For restaurant owners, the closures have set off a devastating chain of events, from layoffs to unpaid bills to, in some cases, permanent closures. The disruption to the restaurant industry will continue for the foreseeable future, even after restaurants reopen because their operations will be subject to significant restrictions.

Restaurant owners purchased insurance coverage for business disruption in anticipation of these desperate times and faithfully paid their premiums for years. But now, when this coverage is needed most, the insurance carriers are aggressively, consistently, and in many cases improperly denying these business interruption claims.

Successful presentation of business interruption claims is a complex undertaking that involves a deep dive into the business's policy language—and requires persistence after the insurance carrier denies the claim. Owners may find coverage through clauses related to business interruption, property damage, or civil authority, or a combination of the three. But insurers are not making that work easy. Restaurant owners should also look to their agreements with shareholders (for corporations) or members (for LLCs), and contracts with vendors to sort out solutions to survive the pandemic. Here are answers to three common questions restaurant owners have grappled with in the past few weeks:

How can owners prepare the strongest possible claim to secure coverage for the losses they have suffered?

The first step in every case, no matter the circumstances, is for the owner to review and understand the specific policy language and what it includes—and excludes. Some policies are written with specific language and a narrow scope, while others describe coverage more broadly and are therefore open to a wider range of interpretations. Does the policy contain an exclusion specific to viruses? Some policies exclude bacteria or fungi, but as you may recall from high school biology, a virus is not either of those. Is there language regarding pandemics?

There is no one-size-fits-all answer on what is covered because policy language differs so broadly. The policy language is dense, but the brokers who sold the policies may not be the best parties to consult because business owners need to anticipate that the insurers will not pay the claims without a fight. While there are policies that were written with language excluding coverage for COVID-19 claims, the insurers do not have a basis to deny all claims across the board.

The language of your policy should shape the way you make your claim. Gather as much documentation as you can to demonstrate the specific nature of the loss (loss of income, property damage, etc.) and what you have done to mitigate it. For instance, the fact that grocery store clerks must wipe down check-out stations between customers is evidence that this virus causes property damage. Being able to prove how you are operating in different and more limited ways will strengthen your claim.

Business interruption is not an “open-and-shut case”: the impact will continue even after restaurants reopen subject to restrictions. Claims must be presented to account for the continuing disruption.

Some restaurants that still have been able to operate in reduced ways, such as offering take-out only, are facing supply-chain interruptions that impact their business, or have responsibilities to vendors that they cannot fulfill. Might insurance cover this?

Business interruption coverage may also include contingent business interruption coverage—losses and unmet obligations that stem from partnerships with vendors. Supplier contracts may also include force majeure clauses (the “act of god” clause that may free or modify the obligations owed by parties) and outline steps parties must take when they cannot fulfill their commitments. For instance, owners who are unable to uphold agreements with linen suppliers or who cannot procure the materials they need to provide to-go items due to changes in pricing may look to both their insurance policies and the supplier agreements to address the issues.

Who can help me file a claim or appeal a claim that has been denied?

Many business owners tend to turn to their insurance brokers to advise them on how to navigate claims. Brokers can be very helpful resources when purchasing coverage but are often not well equipped to compel an insurer to meet its obligation when the insurer denies a claim. Legal counsel that specializes in these kinds of cases have more tools at their disposal to present a claim that successfully navigates the exclusions.



Your ordinary “go to” lawyer for your restaurant-industry matters may not be the right person to consult on your insurance coverage. It is important to be sure the lawyer has specific experience in representing policyholders in insurance coverage litigation. When searching online, look for keywords such as “insurance coverage” in the firm description or specific lawyer’s bio indicating that the attorney represents policyholders and *not* insurers.

We have already seen cases unfolding from coast to coast, including some class action lawsuits in response to insurers that have issued blanket denials of coverage for pandemic-related losses, cases that are relevant to large segments of the hospitality industry. It is hard to imagine that all of these denials—or even most of them—were appropriate. But telling your story in a way that fits the language of your policy, consistent with the way the courts construe coverage, is critical to harvesting the value of the coverage that you purchased. Engaging knowledgeable and competent counsel will be key to overcoming the denials and securing the coverage promised in the policy.

This article originally appeared in QSR Magazine on May 21, 2020.



David Goodman

David Goodman is the founder of Goodman Law Group | Chicago. He draws on his thirty years of legal experience, many of them spent as a first chair trial lawyer, to help businesses manage their risks, harvest their benefits and protect their assets. Learn more at www.glgchicago.com



CHICAGO