

# Insurance Reimbursement for Pandemic Losses

## What do we have to do?

Last week, famed Yountville restaurant owner, Thomas Keller, sued his insurer over refusal to cover pandemic losses. The story made headlines as business owners, many financially pummeled by the quarantines, began to ask, “What do we have to do to get reimbursed for our COVID-19 losses?”

## Why doesn't insurance cover it?

Property insurance policies are designed to provide for loss of business income related to physical damage (fire, wind, vandalism, etc.) to covered property. These policies typically exclude loss due to infectious disease and/or virus.

Public, political or governmental moves to try to get the insurance industry to cover what is projected to be a \$383 Billion loss of business income caused by COVID-19 are not a surprise. But this is a very high hill to climb.

## The “lawsuit” approach

Lawyers suing insurance companies for COVID-19 loss face at least two challenges. Challenge one is in making the case that infectious disease/virus actually does physical damage to property. Challenge two is to prove that the “infectious disease/virus” exclusion is invalid. Regardless of the challenges, how courts ultimately interpret coverage applicability, will only be revealed over time.

## The “legislative” approach

While attorneys take a legal stand against the insurers, politicians, across the country, are introducing bills to force insurers to pay for COVID-19 losses regardless of the coverage wording or the policy exclusions. The insurance carrier and insurance department push-back is that property insurance policies are not designed or priced to provide coverage for communicable diseases.

An insurance carrier lawyer commented recently that “it would be unprecedented for policy makers and lawmakers, on sort of a wholesale basis, to take a whole set of

policies that have already been written and say, “We’re going to invalidate the policy language, not because it is abusive or unconscionable, but just because it doesn’t suit the current needs. Doing so would be harmful to our whole understanding of contracts and predictability.”

Bills that force coverage will undoubtedly face legal and constitutional challenges including the contracts clause of the U.S. Constitution, which limits the ability of states to interfere with private contracts.

The insurance companies are concerned that being forced to pay for something specifically excluded and so massive would not only lead to insolvencies but the destabilization of the entire economic landscape.

### **The “federal” approach**

To get financial relief to business owners quickly, it doesn’t make sense to put a long legal battle with insurance companies in the middle.

Instead, what if a federal program was established to bail them out. It could be handled much like the Federal Terrorism Insurance Act (TRIA) responded to 911. The fund would reimburse the government dollars spent now, over time, while creating a fund for future virus related disasters.

America should help businesses damaged by the coronavirus. We just need to create a clear path for that to happen.

### **What do we have to do now?**

Document, document, document. If you’ve experienced a COVID-19 business income and/or other loss, keep clear records. File them with your insurer even if coverage is ultimately denied. Documenting the loss will be important when the path to reimbursement becomes clear.

### **Pandemic insurance**

It is not inconceivable that we will see the emergence of “pandemic” insurance at some point in the future. However, unlike traditional property insurance, the pandemic policy will likely simply pay out a stated amount once the triggering metric (perhaps a government declaration) occurs. This would eliminate a sometimes long and debated claims process by replacing it with the certainty of a fixed payment made instantly to the insured.

This may be the positive light in the future time when traditional policies may contain even stricter pandemic exclusions.