

# Navigating Current Business Insurance Claim Loss Strategies:

## A REDnews webinar



Bruce Smith



Scott Friedson



Shannon Loyd



Nearly every business has incurred some kind of economic loss associated with the COVID-19 pandemic, which in some cases has proven to be as detrimental as damage caused by severe weather or a natural disaster.

“The ensuing result has been an extremely large economic loss to policyholders who have, in turn, looked to their insurance companies and said, ‘Hey, this should be covered, right?’” said Scott Friedson, CEO of Insurance Claim Recovery Support.

This is Friedson’s forte. As a public insurance adjuster, he’s authorized and licensed to negotiate insurance claims on behalf of policy holders, including business interruption loss claims.

“There have been a lot of disputes and interpretations going on as it surrounds this completely uncharted territory that we’ve entered into around COVID-19 insurance claims,” he said,

kicking off *REDnews*’ May 14 webinar Navigating Current Business Insurance Claim Loss Strategies.

Friedson, joined by attorney Shannon Loyd of The Loyd Law Firm and forensic accountant Bruce Smith of BDS Forensic Accounting, shared how policyholders can best navigate the uncharted territory in which businesses find themselves today.

“Nobody knows exactly what’s going to happen or how this is all going to shake out,” said Friedson. The most common question he said he’s received is whether a policyholder should file a business interruption claim.

“I think the answer we all agree on is emphatically yes,” Friedson said.

In all likelihood, that claim will initially be denied by the carrier. Most insurance companies, Friedson said, make the argument that COVID-19 caused the business losses and is therefore not covered under

the policy. He argued that the executive orders issued at the state and local level, not the virus itself, caused businesses to shut down.

“The virus didn’t write the orders. The virus didn’t stand in front of a restaurant and say, ‘You can’t come in here.’ The virus didn’t prevent people from leaving their houses,” Friedson said.

“All the orders are different. There are state orders. There are county orders. In most situations businesses are shuttered because of both the state and local order,” echoed Loyd, who has specialized in insurance law for the past 15 years. “Some include language that the virus causes physical loss or damage and some of them do not. We maintain that that doesn’t matter.”

She added that as early as February, she saw carriers doing a “full-court press” to try to convince businesses there is no coverage for their interruption because of COVID-19.

“The whole point of this is to keep businesses from even making a claim,” she said. “Be prepared. A lot of agents are giving pushback and trying to dissuade policyholders from even making a claim. If that happens to you, insist that the agent submit the claim. You have the duty to notify your carrier of a loss.”

When starting the process, Friedson advised reviewing your policy as the language is key and varies policy to policy, especially regarding physical loss.

“This is the key thing the carriers are focused on. That’s not the case with most policies, which are all-risk policies. They say ‘physical loss of or damage to the property.’ The word ‘or’ is very important,” said Loyd. “We argue there are two ways, not just one.”

That’s been backed up in past verdicts, including *Trinity Industries, Inc. v. Insurance Co. of North America* and *Murray v. State Farm Fire & Cas. Co.*

Be on the lookout for virus exclusions listed within the policy either under Exclusions or added as an

endorsement to the policy. Examples of common language include “We do not insure ... for any loss which would not have occurred in the absence of one or more of the following excluded events ...” and “We will not pay for loss or damage caused by or resulting from any virus ... that induces or is capable of inducing physical stress, illness or disease.”

While that may seem to draw a clear line in the sand, Loyd said that doesn’t end the analysis of whether a claim is valid.

“If the virus isn’t actually present at the property, it doesn’t actually apply,” she said. “Our argument for the carriers is that if they want to apply this virus exclusion, they need to prove that it’s actually at the premises.”

Another important factor in a claim is the calculation of business income loss. Smith, who has had experience working on a number of natural disasters dating back to Hurricane Andrew, said there are two ways to do it. Gross income takes any projected sales you lost and subtracts any expenses you’ve saved. The business income policy factors net income combined with continuing expenses.

“One’s starting at the top and going down. The other starts at the bottom and adds up. You end up in the same place,” he said.

At this point in time, Loyd and Friedson have not heard of a COVID-19-related business interruption claim being paid out. If yours is denied, Friedson suggested trying to settle the claim on your own by asking your insurance company for facts that support their position. If settlement isn’t an option, it’s time to reach out to a public adjuster or attorney to take the next step. In the end, they agreed, it will be up to the courts to decide how carriers respond to these claims. ■

For assistance navigating your claims, contact The Loyd Law Firm at (210) 775-1424, Insurance Claim Recovery Support at 832.725.2878 and BDS Forensic Accounting at 954.755.7981. To join REDnews for upcoming webinars & events, check out our calendar of events on REDnews.com



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