

# LUNCH N LEARN

IFA WEBINAR SERIES

## Managing Risks of Covid-19 Through Contracts and Operations: Strategies for Success

Webinar Date

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# Speakers

- Richard Brown, Partner - Saxe Doernberger & Vita, P.C.
- Giovanni Yruela, President of Partnerships & Alliances - Planet Hollywood International

# Covid-19 Pandemic Timeline & Relevant Regulations

March 2020:  
Closures & Stay  
at Home orders.

September 2020: Schools open at  
partial capacity; many retailers  
remain closed, while indoor dining  
begins to shutdown as  
temperatures drop.

February 2021: brick & mortar  
retailers and indoor dining  
expands as new cases decline  
and number of those vaccinated  
continues to rise.

May 2020: Indoor dining  
and brick & mortar retail  
begins to open; schools  
remain closed.

November 2020: indoor dining is  
limited as cases rise because of  
the holidays.

# Operational Changes due to Covid-19

- **Closures and Delayed Openings**
- **Virtual Restaurant & Delivery Services**
- **Royalties & Other Fees**
- **Vaccine Mandates**
- **Contract Updates: Force Majeure & Indemnification**

# Vaccine Mandates

- **U.S. Department of Labor:**
  - Mandatory vaccination is permissible
  - Policy must include exemptions for:
    - Disabilities
    - Religious Beliefs

# Contractual Updates: Force Majeure & Indemnification

- **Force Majeure:**
  - Do current provisions contemplate Covid-19?
- **Indemnification**
  - Potential Updates in Response to Covid-19

# First-Party Property Coverage

- **Commercial property policies provide coverage for a variety of PD and Business Interruption risks.**
  - General Rule → There must be property damage somewhere to trigger coverage under these policies.
  - Insurers will argue that mere presence of Coronavirus is not enough to constitute property damage – need a physical alteration of insured property (e.g. damage caused by fire).
- **Presence of “direct physical loss or damage’ has been key issue in first-party Covid-19 insurance coverage litigation.**



# Recent COVID-19 Decisions

- **10e LLC v. The Travelers Indemnity Company of Connecticut;** Case No. 2:20-cv-04418-SVW-AS (C.D. Cal. Aug. 28, 2020)
- **Malaube, LLC v. Greenwich Insurance Company, Case No. 1:20-cv-22615** (S.D. Fla. Aug. 26, 2020)
- **Studio 417, Inc. et al. v. The Cincinnati Insurance Company, Case No. 6:20-cv-03127** (W.D. Mo. Aug. 12, 2020)
- **Optical Services, USA, et al. v. Franklin Mutual Insurance Company, Docket No.: BER-L-3681-20** (N.J. Superior Court Aug. 13, 2020) (bench decision)

# Virus Exclusion

If the “direct physical loss” requirement is satisfied, the next hurdle will be the virus exclusion.

COMMERCIAL PROPERTY  
CP 01 40 07 06

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA**

**B. We will not pay for loss or damage caused by or resulting from any virus, bacterium or other micro-organism 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.

# Civil Authority Coverage

Some policies provide coverage for losses caused by acts of “civil authority” that block access to an insured’s facilities.



- May require direct physical loss to property to trigger.
- May apply when government acts prohibit access to property of suppliers, providers, or vendors.
- Some policies may require a prohibition of access – governmental mandates key to triggering.
- May be limited to a certain time frame (e.g., 30 days).

# Ingress/Egress Coverage

Some policies provide coverage for losses caused by the business's closure because of physical prevention of ingress to or egress from the property.

- May require direct physical loss to property, either the insured property or third-party property, to trigger coverage.
- May be limited to a certain time frame (e.g., 30 days).

# Commercial General Liability – Insuring Agreement

## Part A: Bodily Injury and Property Damage Liability

- Occurrence – is transmission of virus an accident?
- BI v. PD
  - ▶ Does BI include emotional distress/mental anguish?
  - ▶ PD includes Loss of Use of tangible property
- Damages “because of BI or PD”

## Part B: Personal and Advertising Injury Liability

- False Detention or Imprisonment
- Oral or written publication that slanders or libels someone or disparages a person’s goods, products or services
- Oral or written publication of material that violates a person’s right of privacy

## Part C: Medical Payments

- Medical Expenses for “bodily injury” caused by an accident
- Payments are made regardless of fault

# Workers Compensation

- **In the event one or more of a company's workers contracts an infectious disease, the worker(s) may be entitled to worker's compensation benefits.**
- **ANTICIPATED ISSUE - CAUSATION: How did the worker contract the disease?**
- **State Regulations:**
  - Rebuttable Presumption of infection while in the course and scope of employment.
  - Employer may dispute WC claim and present evidence that employee did not contract COVID-19 at work
- **States That Have Enacted Rebuttable Presumptions in Context of WC Coverage:**
  - California
  - Connecticut
  - Illinois
  - Michigan
  - New Jersey
  - New York
  - Vermont

# Additional Lines of Coverage Implicated by Covid-19

- **Cyber Liability**
- **Auto Liability**
- **Franchisor's E&O**
- **Event Cancellation (First Party Cover)**

# Legislative Responses

## State:

**Legislation would require insurers to cover business interruption losses from the pandemic:**

- **New Jersey: N.J. Draft Bill A-3844**
- **Ohio: H.B. 589**
- **Massachusetts: SD.2888**
- **New York: Draft Assembly Bill A10226**

## Federal:

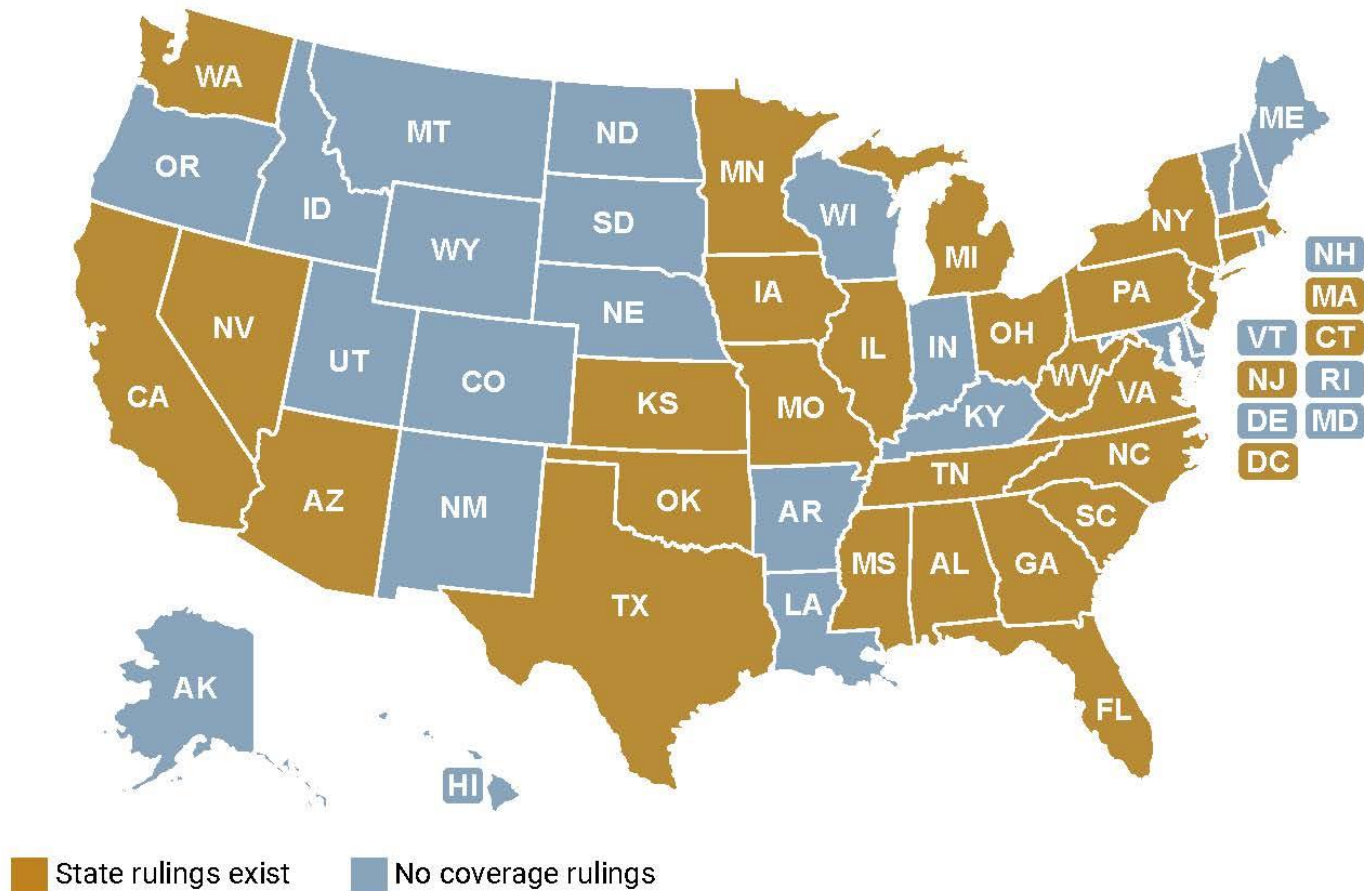
### **Pandemic Risk Reinsurance Program (PRRP)**

- private insurance companies & federal government share responsibility for paying claims for covered losses
- **Voluntary Participation in PRRP / Mandatory Coverage for defined public health emergencies under BI policies**
- any exclusions that explicitly exclude loss covered under PRRP would be void; state approval of exclusions explicitly preempted by PRIA
- **PRRP triggered after aggregate industry losses for participating insurers exceed \$250M; federal funds capped at \$750M within a calendar year.**



# SDV COVID-19 Resources

[https://www.sdvlaw.com/coronavirus\\_news.asp](https://www.sdvlaw.com/coronavirus_news.asp)



# Key Policyholder Takeaways

- **Review your insurance policies carefully.**
  - *Not all policies are the same.*
  - *Work with broker and coverage counsel to better understand coverage available.*
- **Provide notice early and often**
  - *Consider blanket/precautionary notices to insurers.*
- **Document losses carefully.**
- **Keep lines of communication open with insurers.**
- **Statutes & Suit Limitations and expiration of relevant legislation.**

Questions?

# Contact Us



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**Thank you for attending!**