

# LOUISIANA

## AGENT

April 2020



A publication of the Independent Insurance  
Agents & Brokers of Louisiana





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### *In this issue:*

IIABL President's Report .....	4-5
Louisiana Legislature After COVID19 .....	5-9
eDelivery: Things to Consider .....	9
TechTips: Microsoft Teams .....	10-11
Federal Legislation: Business Interruption .....	13
COVID-19 Civil Authority Orders .....	14-16
Is Cleaning a Surface Contamination a Repair? .....	16-18
Have Your COVID-19 Cake & Eating Too .....	18-20
Create Community Everywhere .....	21-22
Serving Customers & Employees in the COVID-19 World .....	23-24
Calendar .....	25
Q&A About E&O and How Losses Can Be Prevented .....	26-28
Text Messaging in Your Agency .....	28-29
Rate & Rule Filings .....	31
IIABL Partners .....	33
IIABL Officers & Board .....	34

## IIABL President's Report by Joey O'Connor



As I sit here writing this article, I'm looking out the window and it is an otherwise beautiful day in the New Orleans area, with low humidity, clear skies and 77 degrees. It is just a normal, April, spring day. However, it is anything but normal

as we all know.

First, let me say, that I truly hope all of you and your families are safe and well. One of my daily Prayers is for the individuals and families that are adversely affected, especially if tragically impacted by this virus. This virus does not have a particular segment of the population or individuals in its sight....we are all at risk. Please continue to practice safe health practices as we try to get back eventually and hopefully somewhat soon to opening businesses.

It seems like just yesterday that I was at the podium in Destin delivering my incoming speech and along with that all of the things we wanted to accomplish as an association. Auto Insurance Tort Reform being the highest profile objective and toughest given our State's history on items like this. We already had a good bit of momentum created by then Representative Kirk Talbot's Omnibus Act bill that he introduced in the 2019 legislative session. He had just dropped the bill on the Senate side, when.....life would change dramatically in our Country and in fact the world.

We all know of the threat and challenges Covid19 has presented and in some cases will continue to impact how we live our lives going forward for the foreseeable future. While this won't prevent Auto Tort Reform from continuing, for the time being, it is sort of on hold until the Legislature can once again go back into session. Maybe in person, maybe by tele-video conference. Our association will continue to be engaged in this process and be ready at a moment's notice to begin our grass roots efforts to get this

"must pass" legislation on the Governor's desk for signature.

In mentioning, how Covid19 is impacting not only how we live day to day, our businesses, other businesses around the State, it has also impacted how our State Association is functioning. Rest assured that Jeff Albright and his staff have taken appropriate steps to operate from home, to keep everyone safe and to decrease the exposures to themselves as well as to keep engaged in helping to protect member agents and agencies during this unprecedented time. Our staff has been doing a phenomenal job under very difficult circumstances.

Our association has been engaged on many fronts as Covid19 becomes the hot topic in our industry. IIABL, under the leadership of our CEO, Jeff Albright, has been working with our Insurance Department and Commissioner, Jim Donelon to express agents concerns during this time of many businesses experiencing financial hardship that has led to recent Emergency Rules, specifically Rule 38, 39 and 40. Hopefully, this will help our insured's capabilities to pay bills, meet payroll and provide services without fear of having their insurance policies cancelled for the inability to pay premiums as a result of diminished business and cash flow.

IIABL is also involved in the discussions regarding Loss of Business Income specifically in Property policies and others as well. While we don't know exactly how this will play out across the Country legislatively or even judicially, we will continue to monitor and hopefully continue to be a voice of expertise and reason as the situation unfolds.

Unfortunately, it is with great personal disappointment but with the unanimous support of the IIABL Executive Committee and Board of Directors that we announce the cancellation of our Convention in June. Unfortunately, there are way too many unknowns at this point to have confidence that we would be able to pull off a safe (our number 1 priority) and successful event. We don't have a crystal ball to tell us exactly how the convention would function, if people would even attend, if companies and brokers would relax their travel restrictions by then. The risk at this point is not worth the reward. I've been a long time convention attendee, well before becoming a board member and now your President and I can assure you that this decision was not made without long multiple discussions and careful consideration.



## Louisiana Legislature After COVID19

Last, please be assured that we will continue being an active and engaged voice for our agents and agency members. We look forward to the day, hopefully sooner than later that we can once again hold events where we can see and talk with each other, even if at 6 foot distances, about business, government affairs or just how each other is doing.

I wish everyone good health and safety as we continue down this road of unusual times. I believe that every situation can make you better or make you worse. I have no doubt with the staff we have at IIABL and the board members we have representing you that our association will be better as we move forward and in turn makes our agents and agencies stronger.

**Louisiana Legislature After COVID19** Like the rest of us, the Louisiana Legislature is trying to figure out how to operate in the new normal of life with COVID19. The Governor has extended the stay-at-home order through May 15. The Louisiana Constitution requires that the legislature adjourn on June 1<sup>st</sup>. That does not leave enough time for the legislature to conduct the bare minimum legislation like the budget.

The governor said that the Louisiana Legislature is essential infrastructure that is exempted from this stay-at-home order. So...they need to get back to work, right? Not so fast! How does the legislature, which by its nature is an up close and personal political process with people jammed into rooms negotiating legislation, conduct business with six foot social distancing, masks and gloves?

Legislative leadership is trying to figure out



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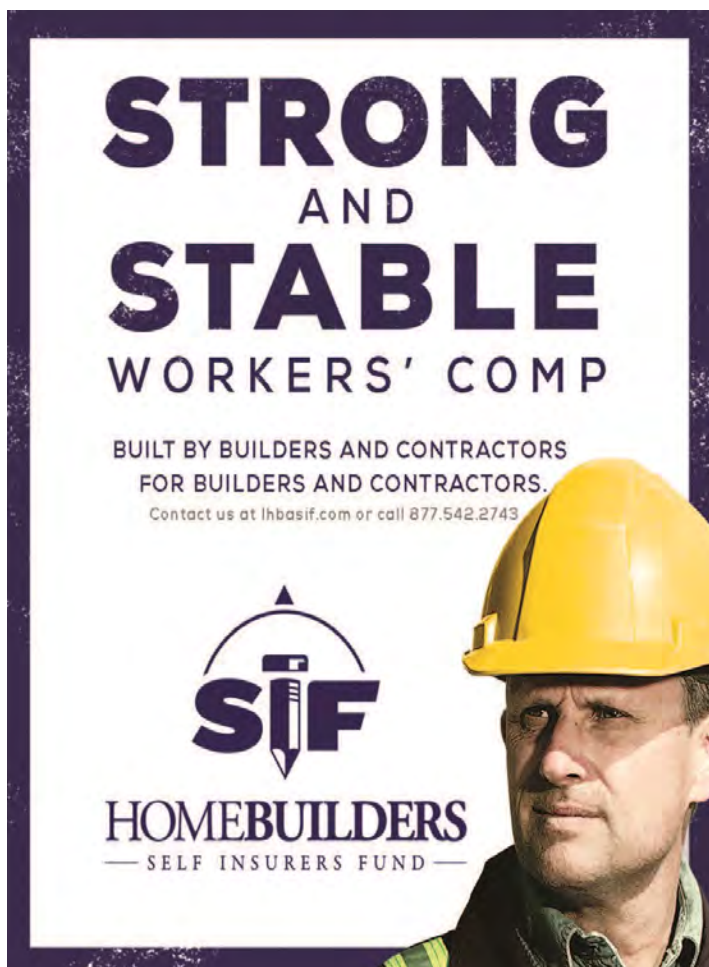
how they can conduct business and what business needs to be conducted. It appears that the legislature will meet for a limited amount of time in May to pass the bare minimum legislation necessary, and then schedule one or more special sessions later in the year to conduct other important business.

What does that look like?

In the May Regular Session, the legislature must pass a stop-gap budget bill before the July 1 start of the new fiscal year. The problem is that they have no idea what state tax revenue will look like. Some estimates indicate that revenue may be reduced by as much as \$700 Million. A revised budget will almost certainly be required sometime in the fall. There are a significant number of Senate confirmations that must be conducted in May. There will also be pressure to pass some COVID19 legislation during the Regular Session.

A significant number of COVID19 bills have been introduced into the Regular Session. Most of these bills fall into three categories: mandating insurance coverage where none exists, limiting liability for COVID19, and suspending prescription and other legal deadlines because of pandemic delays in the courts. Of particular note are SB477 by Senator Ward and HB 858 by Representative Duplessis which would mandate that insurance companies pay COVID19 business income claims, and SB 475 by Senator Womack which would mandate that insurers pay Workers Compensation claims for essential workers.

Following are a list of some of the more important COVID19 bills.

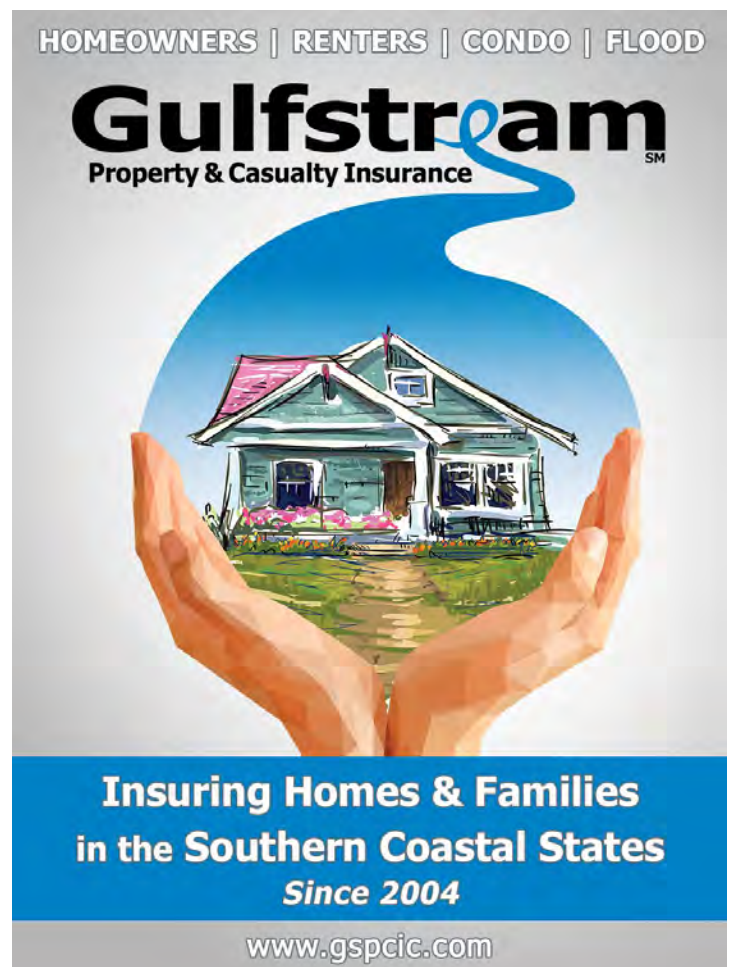


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<a href="#">HB826</a>	<a href="#">PRESSLY</a>	Pending House referral		<a href="#">more...</a>
	LIABILITY: Provides relative to the limitations of liability due to the COVID-19 public health emergency			
<a href="#">HB856</a>	<a href="#">EDMONDS</a>	Pending House referral		<a href="#">more...</a>
	LIABILITY/CIVIL: Provides relative to limitations of liability in response to the COVID-19 state of emergency			
<a href="#">HCR25</a>	<a href="#">GREGORY MILLER</a>	Pending House Civil Law and Procedure	<a href="#">Sched. for 4/13/20</a>	<a href="#">more...</a>
	CIVIL/ACTIONS: Provides for the suspension of all civil prescriptive, peremptive, filing, and other deadlines in response to the COVID-19 Public Health Emergency declared by the governor			
<a href="#">SB426</a>	<a href="#">BARROW</a>	Pending Senate referral		<a href="#">more...</a>
	INSURANCE CLAIMS: Requires health insurance coverage for COVID-19 (Coronavirus) diagnostic testing.			
<a href="#">SB445</a>	<a href="#">PEACOCK</a>	Pending Senate referral		<a href="#">more...</a>
	LIABILITY: Provides relative to limitation of civil liability for medical personnel and healthcare providers during public health emergency.			
<a href="#">SB475</a>	<a href="#">WOMACK</a>	Pending Senate referral		<a href="#">more...</a>
	WORKERS' COMPENSATION: Provides relative to workers' compensation claims filed by essential workers in the workplace.			
<a href="#">SB477</a>	<a href="#">WARD</a>	Pending Senate referral		<a href="#">more...</a>
	INSURANCE POLICIES: Provides relative to business interruption insurance.			
<a href="#">SB506</a>	<a href="#">BARROW</a>	Pending Senate referral		<a href="#">more...</a>
	PROPERTY INSURANCE: Requires property insurance policies insuring commercial and residential buildings to cover cost of disinfecting fumigation.			
<a href="#">SCR20</a>	<a href="#">CORTEZ</a>	Pending Senate Judiciary A		<a href="#">more...</a>
	LEGIS POWERS/FUNCTIONS: Suspends certain legal requirements as a result of emergency health measures relative to the Coronavirus.			
<a href="#">HB858</a>	<a href="#">DUPLESSIS</a>	Pending House referral		<a href="#">more...</a>
	INSURANCE: Provides relative to business interruption claims due to the coronavirus disease 2019 pandemic			



What about auto/tort reform? There is still significant interest in the legislature to push for tort reform. This includes new limitations on litigation related to COVID19, auto/tort reform, and oil & gas tort reform. [SB 418](#) the Omnibus Premium Reduction Act of 2020 by Senator Kirk Talbot remains the leading auto/tort reform bill. It is difficult to see how all of these tort reform bills can be passed in the limited amount of time during the Regular Session. One possibility is that the legislature may try to pass the limitation on COVID19 litigation because of the immediate threat it poses and delay action on the other bills. If the governor calls special sessions later this year, he is not likely to include tort reform in the call, so legislators are talking about calling themselves into session to pass tort reform. This would be a historic move that would focus attention on the tort reform debate.

As always, IIABL will keep you informed about any significant developments on insurance related issues in the Louisiana Legislature and will be there lobbying to protect your interests.

## eDelivery Things to Consider

As technology becomes more ingrained in our personal and professional lives, it is important for agents and brokers to have the tools necessary to meet consumers' digital habits. One area of particular importance is consumers' growing preference to receive documents electronically.

When implemented correctly, electronic delivery can save time and money while meeting consumer preferences and reducing legal exposures. ACT has worked with the Big 'I' national general counsel to create an '[Electronic Delivery Consent Form](#)' template agencies can download and use.

Initially developed to cover sending documents electronically via email, it was also expanded to cover access to documents on customer portals as well



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# TECH TIPS

## Enhancing Collaboration and Communication with Microsoft Teams



Over the last few weeks, there has been a grand experiment with remote working. One of the problems is maintaining communication and collaboration among team members.

Email is a very cumbersome and unproductive way to communicate with team members. It is slow and hard to keep track of multiple conversations and conversation threads.

Several platforms have been created over the last few years that attempt to solve this problem.

One example is **Microsoft Teams**.

Microsoft has spent many resources over the last few years enhancing their Microsoft Teams collaboration platform. It is a tool your agency should consider adding. One reason is Teams are included as part of the Office 365 (recently renamed Microsoft 365) subscription.

### What is Microsoft Teams?

[Microsoft Teams](#) is the hub for teamwork that allows employees to communicate and collaborate in a single and secure location. Teams is a four-in-one solution. Messaging provides a rich chat-based experience, online meetings – similar to Zoom – where you can stay visually connected, phone calling capabilities built on Microsoft's worldwide network, and native integration with the familiar Office applications.

The Teams experience is built for the web browser as well as apps. So you can use all of your devices running Windows, Mac, iOS, and Android.

### Teams Tools

The tools available in the Teams platform include:

**Chat** – If you are familiar with Slack, then this tool will be familiar. You can have private one-on-one chats as well as group chats. To keep organized, you can pin chats to the



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## Federal Legislation Introduced on Business Interruption Coverage

Rep. Mike Thompson (D-CA) introduced the [Business Interruption Insurance Coverage Act](#) along with nine other Members of Congress. The legislation would require every property/casualty policy which includes business interruption coverage to cover losses stemming from a viral pandemic or business closure while preempting state law in nullifying any such exclusions in force on the date of enactment.

Those joining Rep. Thompson in this misguided and harmful legislation as original cosponsors are: Representatives Alcee Hastings (D-FL), John Larson (D-CT), Grace Napolitano (D-CA), Mike Rogers (R-AL), Jerry McNerney (D-CA), John Garamendi (D-CA), Darren Soto (D-FL), Gil Cisneros (D-CA), and TJ Cox (D-CA).

The Big "I" and our industry partners received word of this legislation yesterday and over the course of the past 24 hours reached out to every House office to notify them of our strong opposition to the bill. An [industry letter signed](#) by the five major p/c insurance trades laying out our opposition while also expressing our support for practical solutions to the problems facing our business clients in these unprecedented times.

Nathan Riedel of our office will be reaching out asap to our CA, FL, CT, and AL associations and will be working with them on grassroots action on these Reps. asking that they take their names off the bill.

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We are featuring 3 articles written by Bill Wilson that are timely, informative and will explain questions you may have not even thought of yet. These articles cover civil authority, surface contamination and business income.

## COVID-19 Civil Authority Orders and Legal Gamesmanship

There is a belief that business closure orders by civil authorities trigger Civil Authority coverage in business income insurance policies if they allege property damage of some kind. This is a misconception that is typical of generalizations about insurance contracts that come from the failure to actually read the policy language.

For example, most of the local and state governmental orders I've seen reference property damage as a basis for mandatory business closures or operational changes. Here is one of the eighteen "WHEREAS's" in the [City of Key West State of Local Emergency Directive 2020-03](#):

"WHEREAS, this order is given because of the propensity of the virus to spread person to person and because the virus physically is causing property damage due to its proclivity to attach to surfaces for prolonged periods of time;"

Dust has a proclivity to attach to surfaces, but does that result in "property damage" if I can remove it with a cloth? If I don't vacuum my home for a month, have the floors been damaged? Admittedly, a virus can be more problematic than dust for most people, but does it actually cause damage by temporarily residing on the surface of property? These questions were addressed by the [first](#) and [second](#) articles I wrote about the COVID-19 pandemic. Yes, there is a temporary impairment of the use of the property, but almost certainly no direct physical damage and likely no real damage at all.

In addition, if we're being honest about these government-mandated business interruptions, we would admit that their purpose is to prevent or minimize the spread of dis-

ease from one person to another. Surface contamination is simply one means of this occurring. These orders really aren't issued to prevent or minimize property damage because, realistically, there is no real property damage.

So, why do these orders include the "property damage" references? Legal gamesmanship. Well-intentioned perhaps, but an attempt to impact insurance coverage based on a generalized comprehension of what is and isn't covered under many, if not most, business income insurance forms. For example, following up on the Key West directive above, consider this excerpt from a [local publication](#) citing attorney Darren Horan:

"Both types of coverage – and people can have one, both or neither – but they both require physical damage to the property, which is why it was so important for the city to include specific language in its emergency declaration stating that the virus causes physical property damage. That can only help business owners with these types of coverage. Of course, it's always a fight when dealing with insurance companies, but I'm glad Commissioner Clayton Lopez was at the meeting when I mentioned this needed language and brought it back to City Attorney Shawn Smith for inclusion in the city directive."

Based on this narrative, the inclusion of a reference to property damage in the directive was for the purpose of triggering insurance coverage, not because of any real or perceived property damage. In fact, there was no citation of any actual property damage at all. If anything, such orders are issued to PREVENT "property damage," something that does little or nothing to actually trigger most business income coverage forms. For example, take this language from the Civil Authority Additional Coverage in the ISO CP 00 30 10 12 business income form:



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;

Let's parse this language phrase by phrase to illustrate why simply placing a "property damage" statement in a civil authority directive is almost certainly insufficient to trigger coverage.

***"causes damage to property other than property at the described premises"***

There is no allegation of any real, existing damage to any property. The policy language indicates that the viral contamination (IF a covered peril) must have actually caused damage to property. Directives like this are preventative, not remedial.

***"that prohibits access to the described premises"***

Nothing in this directive actually prohibits access to any premises. The directive prohibits conducting business as usual with the public. It does not forbid, for example, a property owner from physically accessing his building or business. In fact, for many businesses, they can continue operating in a modified way, such as a restaurant providing carryout or delivery of food. In situations like that, certainly the employees have access to the premises.

***"Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage"***

There are three points to make about this last policy language excerpt:

**First**, there is no identification of any "damaged property." Again, the directive is largely preventative.

**Second**, the directive doesn't appear to prohibit access to the area. A business may be closed entirely to the public, but that doesn't mean someone can't walk or drive down the street immediately adjacent to the business. The reason for this reference to the surrounding area in the policy language is to express the intent of the coverage which is, for exam-



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ple, when a hurricane or tornado impacts a neighborhood or business district, with extensive debris, downed power lines, etc. access is limited only to necessary emergency personnel. This coverage was never intended for an exposure like a viral pandemic that largely impacts individual facilities and not widespread areas.

**Third**, IF there was a prohibition against accessing the immediate area, it would have to be "as a result of the damage." What damage? No actual damage is cited or known, much less proven, to exist. The reason the "property damage" directive language doesn't accomplish, in this example, what the attorney thought it did is because the basis for the language was a generalization of coverage and not what the cited policy language actually says. Unfortunately, the media, government officials, politicians and others pick up only on the generalization and not the actual contract language.

Game over.

## Is Cleaning a Surface Contamination a "Repair"?

Is cleaning a surface contamination a "repair"? In other words, does "direct physical loss or damage" refer to permanent alteration of property that can only be remedied by repair or replacement and not to simple impairment of the use of that property?

From my book "When Words Collide: Resolving Insurance Coverage and Claims Disputes":

### Intent

When reading an insurance contract, what is the intent of the parties, from a coverage standpoint, expressed by structure, syntax, semantics, and context of the policy language? In a general sense, that's an easy question. The intent of most insurers is to cover what was actuarially contemplated by the premium



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charged. The intent of most insureds is to cover *every* event that results in financial loss. As expressed in the Dedication of this book by California Chief Justice Malcolm Lucas, *"No one knows what evil lurks in the hearts of men...but it's all insured."*

Needless to say, insureds are not happy when a claim is denied and insurers are not happy when they are compelled to pay for a claim not contemplated by the actuarial department and the drafters of the policy form. Insureds can minimize their grief by recognizing that insurance is not a commodity and that the adage "You get what you pay for" often holds true. You bought cheap, you got cheap. Insurers can reduce the likelihood of continuing interpretive misery by, as outlined in the last chapter, revising the policy language that resulted in unintended coverage.

The legal system takes a more pragmatic view of what is meant by "intent" of the parties when it comes to interpreting a contract, specifically an insurance contract. In determining coverage, or lack thereof, the judicial consensus, by word if not by action, is that the first goal is to identify the intent of the parties entering into the insurance contract. In doing so, most courts will try to determine the meaning of words and phrases within the four corners of the policy via a literal reading of the form language in its plain and ordinary meaning and within the context of the facts of the claim....

So, what is the intent of the ISO CP 00 30 business income form when it comes to coverage for viral surface contamination? The primary business income coverage is triggered by "direct physical loss or damage" to property on the premises. Coverage applies during the "suspension of operations," a term defined as **[emphasis added]**:



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**"Period of restoration"** means the period of time that:

**a. Begins:**

(1) 72 hours after the time of direct physical loss or damage for Business Income Coverage; or

(2) Immediately after the time of direct physical loss or damage for Extra Expense Coverage;

caused by or resulting from any Covered Cause of Loss at the described premises; and

**b. Ends on the earlier of:**

(1) The date when the property at the described premises should be **repaired, rebuilt or replaced** with reasonable speed and similar quality; or

(2) The date when business is resumed at a new permanent location.

The consensus is that the viral contamination can usually be removed from the surface of property by simple disinfection. Even in the absence of that, the virus allegedly dies of its own accord within about 3 days. That sounds less like "direct physical damage" and more like an *indirect* loss involving simple temporary impairment of the *use* of the property.

The time period for coverage is based on when property should be "repaired, rebuilt or replaced." Does simply cleaning temporarily impaired property surfaces constitute repair, rebuilding or replacement? Or does "direct physical damage" refer only to a permanent alteration of property that must be remedied by actual repair or replacement and not just a temporary impairment of the use of that property?

Based on the logic of this analysis, one could argue that this coverage was never intended to apply to "damage" that can be

remedied by the use of Clorox wipes in a matter of hours in most businesses. In other words, the language in this definition refers to "direct physical damage" that requires an actual repair or replacement of the damaged property.

For a deeper dive into these issues:

- "Business Income Insurance...Does It Cover Coronavirus Shutdowns?"
- "Is a Viral Contamination 'Physical Damage'?"

Additional articles on the insurance implications of the COVID-19 pandemic can be found on my blog at [www.InsuranceCommentary.com](http://www.InsuranceCommentary.com).

## Having Your COVID-19 Cake and Eating it Too

On March 20, I wrote an article titled "[Business Income Insurance...Does It Cover Coronavirus Shutdowns?](#)" addressing the grounds in what is believed to be the first lawsuit seeking business income coverage for the COVID-19 pandemic in the U.S.

One of the issues is whether the surface contamination of property by a virus triggers the insuring agreement in the policy requiring "direct physical damage." In the March 20 article, I outline the reasons why I don't believe that's the case, but there is one more point I'd like to make.

The lawsuit contends [**emphasis added**]:

"23. It is clear that **contamination** of the insured premises by the Coronavirus would be a direct physical loss needing remediation to clean the surfaces of the establishment."

In other words, the plaintiff asserts that "contamination" is a direct physical loss that triggers coverage. My argument is that mere surface contamination isn't sufficient in its nature and permanency to constitute direct physical damage. ***But let's pretend it is....***



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In order for coverage to attach under the business income policy form in question (the ISO CP 10 30 10 12 – Causes of Loss Special Form), the direct physical damage must be caused by a Covered Cause of Loss. The CP 10 30 covers any nonexcluded direct physical loss. However, this exclusion appears in the CP 10 30 form:

*Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".*

*"Specified causes of loss" means the following: fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.*

From the CP 00 30 10 12 – Business Income (And Extra Expense) Coverage Form  
[**emphasis** added]:

*"Pollutants" means any solid, liquid, gaseous or thermal irritant or **contaminant**, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.*

In other words, the business income policy excludes a "contaminant" unless it is caused by a "specified causes of loss" and none of the listed "specified causes of loss" include viruses or pandemics.

So, if you assert that viral contamination is a physical loss in order to trigger business income coverage, you must recognize that the policy excludes losses arising from contaminants unless the contamination is caused by one of the listed named perils.

You can't have a substance be a contaminant in one part of the policy but not a contaminant in another part of the policy. Otherwise, you're expecting to have your cake and eat it too.

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## Create Community Everywhere



**Sharon Emek, PhD, CIC**  
**CEO & President,**  
**Work At Home Vintage**  
**Experts**

Millions of people have suddenly become "wahes" - work at home employees. Thrust into this new reality, workers are doing their best to adapt on the fly, converting kitchen tables into office workspaces and taking confer-

ence calls amidst the chaos of kids and barking dogs. For some, working from home during the coronavirus crisis is a

positive way to preserve continuity, stay busy and maintain some semblance of routine. Others find working from home lonely, isolating, or full of distraction, especially with spouses sharing the new "home office." Now, more than ever, it's important for all of us who work from home to create connection and community.

In a recent article, "Coronavirus Will Change the World Permanently. Here's How" 34 big thinkers predicted what's ahead for the world, and you might be surprised at some of their positive prognostications. Not surprisingly, one prediction centers on the creation of a healthier digital lifestyle. Over the past weeks, you've likely seen several inspirational examples of people using tech to do good for others. Singers John Legend, Neil Young, Bono, Chris Martin, Keith Urban, and more have performed virtual concerts from their homes for fans. Cello master Yo-Yo Ma shares daily live concerts. Others have used technology to offer virtual art classes, church services, yoga lessons, book clubs, and exercise sessions. People are using social media to galvanize support for struggling local businesses. Neighborhoods have created coronavirus support groups to help identify community needs and collect names of those able to meet

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these needs. People are holding virtual happy hours with co-workers, texting humorous memes, and offering to pick up groceries for those who can't; the examples go on and on.

Sherry Turkle, professor of the social studies of science and technology at MIT noted, "This is breaking open a medium with human generosity and empathy. This is looking within and asking: What can I authentically offer?"

This trend toward using our tech to create community is long overdue. Instead of spending time informing only ourselves by scrolling through news feeds, posting our latest selfie to our favorite social channel, binging the latest game, or complaining about someone via text, we're starting to see widespread glimpses of what it would be like if we used our time with our technology to create and offer community. The virus is forcing us to use the internet in creative, humane and caring ways to help us unite around solutions to personal and local problems.

This virus is devastating, and there's no sense in minimizing the loss, hardship and financial strain to come. But it's in human nature to hope that when we look back, we'll be able to see some silver linings. It's possible that these positive tech behaviors will be temporary - but isn't it up to each of us to determine whether or not that will be the case?

Let's all reinvigorate our efforts to reach out and creatively build connections with our co-workers, family and communities during this time. And let's remember the difference it made in a time when we needed it most.

To help you be as healthy, happy, and productive as possible during this time, we at WAHVE have put together a video featuring our staff members' and wahves who provide tips on working from home. Now is the time for experienced remote workers to take the lead and help others during this tumultuous time. We'll get through this stronger, together.

## **Serving Customers and Employees in the COVID-19 World**

The world turned on a dime as a result of the COVID-19 pandemic. Fear, anxiety, confusion, economic uncertainty, and medical hardships are just a sampling of the emotions and realities that the pandemic unleashed. And now, over seven weeks in, it is still not clear when the pandemic will end or what the new normal will be.

We have been fortunate to connect with several leaders in the market to discuss their reactions to the pandemic. Below are several areas where agents and brokers have strengthened themselves during this time of chaos and uncertainty. As one CEO commented, "We have never been closer to our customers and employees than we are now."

### **Customers**

As inherently trusted advisors, insurers and brokers are aptly positioned to navigate customers through the frenzied media stories, helping them receive and interpret true and relevant information. Almost immediately, COVID-19 landing pages were created on agents and brokers websites, outlining specific industry issues, P&C insurance resources, legislative and compliance information, employee benefits, and links to governmental resources. Webinars are regularly hosted, keeping clients informed of recent developments. Many brokers were a key voice in helping their clients quickly and effectively access the Paycheck Protection Program.

Brokers have also triaged their client base in light of the impact of the pandemic on their business. Some have made a push to personally contact every client to assess their issues and concerns and develop strategies and action plans. Producers are being encouraged to maintain this regular communication and demonstrate that they are a trusted business advisor. As one broker stated, "This crisis has allowed us to show what we can do."

### **Employees**

Employees are an agent and broker's primary as-



set and as such, good leaders are ensuring their employees know they are needed and cared for. Companies have found ways to facilitate virtual interactions and promote camaraderie from a distance. Some host brief Zoom departmental calls in the morning and afternoon to set plans and recap the day, while others plan virtual happy hours, and another even held a Zoom meeting for the entire company where wins and accomplishments were broadcasted and celebrated.

CEOs of several firms have contacted each of their employees directly to check in and see how things are going from a personal and professional perspective. Others are sending weekly emails to update them on business performance, issues, and happenings. To alleviate some concerns, one CEO made a no layoff promise to employees.

### Technology

With the transition from office to home, technology has played a crucial part in business continuity. Leaders who invested in technology experienced a more seamless transition and have been

better able to handle the move with many firms up and running almost immediately. Yet the pandemic has still exposed weaknesses. As one leader stated, "This is where we are likely to see the most innovation in the future, and it will be imperative to stay abreast of innovation." He went on to say that he will continue to invest in technology that provides "seamless, secure, and efficient delivery of services by their employee to their customers."

### Financial

While the insurance industry has fared better than others, it is not immune to the coming headwinds, and outcomes remain uncertain. To address this uncertainty and prepare for the future, several leaders are developing three action plans – best case, worst case, and expected – and actively conversing with peers, government officials, medical personnel, clients, and insurance company partners to stay up to date on the most recent developments and predictions.



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## Reopening

As businesses begin to consider reopening their offices, keeping the health and safety of employees should be at the forefront and it will be important to continue to listen to employees and their concerns. For several firms, the first steps have been to fully clean and sanitize the office, providing employees peace of mind that they are re-entering a safe environment. Social distancing guidelines are also being implemented. There are special considerations and steps being taken for employees that are more at risk i.e. pregnancy, compromised immune systems, etc. Other measures include monitoring office traffic patterns, temperature checks before work, or providing copious amounts of hand sanitizer. There will be more "gray areas" in which decisions will need to be made. This means that the time of testing for our industry's leaders is, in many ways, still to come.

## Outcomes

Although no one knows the ultimate outcome of this pandemic and its effects on businesses,

there will certainly be positives. Changes in office space needs, increased flexible work arrangements, and less frequent business travel all seem likely. New products will inevitably be developed to address exposures that have been identified during the pandemic. Regardless of the changes, one thing is sure: those in our industry who relentlessly focus on serving clients and do so while creating a uniquely positive employee experience will continue to adapt and thrive.



Brian McNeely, Partner

Reagan Consulting

[Email Brian directly >>>](#)

# MAXIMIZE

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Webcasts			
<a href="#"><u><b>E&amp;O Risk Management</b></u></a> Click above for schedule Available on Demand	<a href="#"><u><b>Ethics</b></u></a> Click above for schedule Available on Demand	<a href="#"><u><b>Flood</b></u></a> Click above for schedule Available on Demand	<a href="#"><u><b>Commercial &amp; Personal Lines Courses</b></u></a> Click above for courses & dates for 2019
<a href="#"><u><b>2020 Webinar Calendar</b></u></a>			
Webinars			
May 5, 2020 9am-11am <a href="#"><u>Active Shooter/ Workplace Violence Risk &amp; Insurance Programs</u></a>  May 7, 2020 12pm-3pm <a href="#"><u>Alphabet Soup: The Mistakes and Coverage Behind D&amp;O, EPLI, FLI and EBL</u></a>	May 13, 2020 8am-11am <a href="#"><u>Cyber Coverage - Data Breach and So Much More!</u></a>  May 14, 2020 12pm-3pm <a href="#"><u>BAP Symbols &amp; Endorsements</u></a>	May 21, 2020 1pm-2pm <a href="#"><u>Insuring Self-Driving Cars, Scooters &amp; Other Modern Transit Risks</u></a>  May 22, 2020 9:30am-11:30am <a href="#"><u>Why Certificates of Insurance...Just Why?</u></a>	May 26, 2020 1pm-2pm <a href="#"><u>Extra Money for Bills, Beer or Both – Insuring Your Side-Gig</u></a>  May 27, 2020 12pm-3pm <a href="#"><u>Commercial Property Claims that Stink and How to Handle Them</u></a>
Events			
To be Announced			



## Agent's Questions About E&O, and How Losses Can Be Prevented

By Mary LaPorte, AINS, CPCU, CIC, LIC, CPIA

**Q:** I am an account manager in commercial lines, and we have heard that because of COVID-19, we need to be careful checking and preparing renewals. We think we have always done a good job in the past, but can you give us an idea of some specific things we should be looking for?

**Trish, Iowa**

**A:** Trish, that is a timely question and one that a lot of agencies are asking me about. With the Coronavirus has come an expectation that policies should cover more than they originally intended. As a result, some carriers are including notices with the renewal clarifying that coverage

for certain exposures not covered under the policy. An example is ISO's clarification endorsement for Business Owners Policies: *BP P 026 03 20 Coronavirus – Advisory Notice to Policy Holders*. However, you should be alert to situations where a carrier may add an exclusionary endorsement, or revise language in an existing form in order to exclude coverage that was not excluded in the past.

Some states require that the insured be notified in situations when coverage has been reduced, but there are usually no requirements to notify the agent. I think you would agree that even if the insured had received a notice,

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Continued page 34



they might not recognize it as anything important that they need to read, or may have read it but not understood its impact. This is where the agent can step in and make an understandable explanation, and possibly offer alternatives to secure the lost coverage.

You might think that if some coverage was reduced at renewal, that the carrier would have to stand by the previous coverage if they did not notify the customer or the agent, or if it was an error. The courts do not agree. Many courts state that once the agent has received the policy and had an opportunity to review it, the coverage stands. Unfortunately, most agents do not find out about the coverage reduction until after an uncovered claim occurs. Surplus lines forms or policies written by non-admitted carriers should especially be scrutinized.

Make sure that when checking form numbers and endorsement numbers that you also verify the edition date to see if it has changed. If

you have a clear, detailed checklist, a well-trained assistant or support person can perform the policy checking, referring the checklist or any discrepancies to a more experienced CSR, Account Manager or Producer. It is then their responsibility to identify the differences between the prior term and the renewing coverage and address critical coverage issues with the insured.

Because of the recent pandemic, there may be other areas that should be addressed with your customers. Premium basis (payrolls, sales) may need to be adjusted. Some of your customers may be involved with new products or services that grew from COVID-19. Others may have out-of-state workers which were not a consideration in the past. Determine if any events have occurred which could trigger coverage under any policy. If so, the insured should consider giving notice to the carrier as soon

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as possible (certainly before the expiration date) to preserve their rights under the policy.

The COVID-19 pandemic is impacting agencies exposure to E&O. It is more important than ever to perform a diligent review with each customer at renewal.

*Mary LaPorte is a consultant and educator with a strong background in Errors & Omissions loss prevention. Forward your E&O questions to [marylp@lpinsuranceconsult.com](mailto:marylp@lpinsuranceconsult.com).*

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Therefore, agents should ask clients to opt in to text messaging and provide messaging terms and conditions, even if the agency communicates via text only with existing or prospective clients or when texts are initiated by the client or prospective client.

As client demand for communication via text messaging grows, so do both opportunities and exposures for independent agents.

Proper workflows, policies, procedures and recordkeeping must be established, but agencies don't have to do it alone.

This ACT resource can help: [\*\*Text Messaging Terms & Conditions Agreement.\*\*](#)

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Allied Trust Ins Co	4—Homeowners	2.76%	\$510,003	10,5858	New: 5/1/2020 Renewal: 5/1/2020
State Farm Fire & Casualty	4—Homeowners	-3.5%	-16,339,151	281,186	New: 7/15/2020 Renewal: 9/15/2020
Valley Forge Ins Co Continental Casualty Co	16-Workers Comp	-6.3%	-\$748,101	1,795	New: 7/15/2020 Renewal: 9/15/2020
EMC Property & Casualty EMCASCO Ins Co Employers Mutual	17—Other Liability	1.6%	\$150,001	3,057	New: 5/1/2020 Renewal: 5/1/2020
American Zurich Ins Co Zurich American of Illinois Zurich American Ins Co	16-Workers Comp	-8.1%	-\$4,117,664	2,477	New: 5/1/2020 Renewal: 5/1/2020
Berkshire Hathaway Homestate Ins Co Redwood Fire & Casualty	16-Workers Comp	-7.0%	-\$305,926	113	New: 5/1/2020 Renewal: 5/1/2020
National Liability & Fire	19—Commercial Auto	18.810%	\$1,591,145	491	New: 6/1/2020 Renewal: 7/1/2020

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