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**FEBRUARY 2020**

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## Coronavirus (COVID-19): Does Business Income Respond?

Over the past two weeks, the VU has received countless questions concerning COVID-19 (the coronavirus) and the business income policy. As authorities require businesses to limit activities or shut down completely, the fear and reality of the loss of income looms large.

Insureds call their agents to ask about business income coverage and agents call us. Or, the agents contact us to get ahead of their clients. Either way, business income is a major topic right now.

Every agent asks essentially the same question, "Is there coverage in the business income policy for business closure or slow down as a result of the coronavirus?"

I'm sorry to tell you up front, but the short simple answer is, no, there is no coverage. The longer answer is a bit more complicated, even though the ultimate answer is the same – no coverage.

In this short piece, three business income coverages are reviewed:

- The business income coverage itself;
- The additional coverage for civil authority; and
- Dependent property coverage.

### Business Income

We will begin with the insuring agreement from the business income coverage. The form reads:

*We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business In-*

*come Limit Of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss.*

Within this insuring agreement, there are three key coverage triggers to consider, "suspension of...operations," "direct physical loss or damage" and "covered cause of loss." Let's review each trigger.

**Suspension of operations.** Given the local, state or federal requirements, this condition may apply as the business may be shut down by a regulatory authority. As of this writing, California, Colorado, Connecticut, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont and Washington have all shut down restaurants and bars. The debate may be the necessity, but government made it necessary. So, regardless of the abuse of power and intrusion into our lives by the government, this requirement is met.

**Direct physical loss or damage:** Here is the first question that causes a bit of problem for whether coverage exists. Does or can a virus cause physical damage?

Physical or property damage as understood and applied in the courts requires physical harm generally evidenced by changes in the physical characteristics that require repair.

Consider an invisible virus **on** any property or even **in** the property, does the presence of a virus on a surface or in the air change the physical characteristics such that repair is required? Given the everyday application and meaning of those terms, no, the virus does not result in property damage.

So, there is no property damage as required by the form, and without property damage, business income coverage does not respond.

**Covered Cause of Loss:** Even if the presence of a virus can be "forced" by the courts to be considered property damage; is the mere presence of the virus a covered cause of loss? This is a longer discussion than the other two triggers discussed above; let's detail this trigger.

### Is a Virus a Covered Cause of Loss

Is the presence of the virus a covered cause of loss? Of course, whether it's a covered cause of loss or not matters only if presence of the virus can cause property damage according to the courts.

There is a specific exclusion within the policy that may apply in addition to a mandatory exclusionary endorsement. Let's look at both exclusions.

Within ISO's business income policy written on a special cause of loss form, the following is excluded:

*1. 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".*

A "pollutant" is defined in the form to mean: "any solid, liquid, gaseous or thermal irritant or **contaminant**, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste." A contaminate, particularly a biological "contaminant," is defined as a contamination of food or environment with microorganisms such as bacteria, **VIRUSES**, fungi or parasites.

Based on the policy wording and the applicable meaning of "contaminant," the unendorsed policy excludes coverage for the presence of a virus via the pollution exclusion. But even this isn't going to stop some attorneys from grasping at straws and any possibility of coverage. On March 16, the first business income suit was filed



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in Louisiana (Cajun Conti, LLC et al DBA Oceana Grill v. Certain Underwriters at Lloyd's (and others including the governor and state)).

But even if the virus is considered property damage AND the pollution exclusion is ignored, how long will the "damage" be present?

Surface can be disinfected in one day.

If not taken care of and disinfected by the owner – according to recent scientific research, the virus can live for only a short time:

Up to four hours in the air depending on the consistency (mist vs. droplets); and

One to three days on surfaces – depending on the surface

Most Business Income policies have a 72-hour "deductible" or waiting period; so unless the waiting period has been reduced by endorsement (CP 15 56), there won't be quali-

fying property damage after a maximum of three days for there to be a qualifying loss. But what about recontamination? Every new contamination is a new event and a new waiting period begins.

If the pollution exclusion is ignored, there is a mandatory endorsement attached to ISO property policies that removes all doubts, the CP 01 40. ISO Released the CP 01 40- Exclusion of Loss Due to Virus or Bacteria in 2006 as a mandatory endorsement to specifically exclude loss resulting from a Virus or bacteria.

ISO stated in the initial filing that the presence of viruses was NEVER intended to be covered due to the pollution exclusion, but they anticipated that some would torture the policy. The CP 01 40 was introduced to negate "*efforts to expand coverage and to create sources of recovery for such losses, contrary to policy intent.*" (ISO wording in the release.)


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## Business Income Result

So, what's the result? There is no business income coverage.

There is no property damage – thus there is no coverage.

If courts disagree about property damage AND ignore the pollution exclusion, what is the period of damage? According to scientist, a maximum of three days without human intervention. (Remember, there is generally a 72-hour deductible.)

If CP 01 40 attached, there is no question that there is no coverage.

Ultimately and overall, there is no Business Income Coverage.

## Civil Authority

Let's go to the policy and look at the wording in regard to civil authority (slightly abridged):

### a. Civil Authority

*In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations.*

*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... 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; and*
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of*



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*Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.*

*Civil Authority Coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began and will end:*

- (1) Four consecutive weeks after the date of that action; or*
- (2) When your Civil Authority Coverage for Business Income ends;*

*whichever is later.*

What are the requirements for there to be coverage? Some look very familiar:

There must be a covered "cause of loss." The damage, if there is any, is excluded by either the pollution exclusion or the CP 01 40.

Access to the area must be prohibited by the civil authority. You can still get into the area you just can't go into the building (maybe).

The property damage must have occurred within 1 mile of insured's premises.

The civil authority must prohibit access due to dangerous physical conditions. Is it the property or the people that might lead to a civil authority decree? This is a biological condition not a physical condition.

There is a 72-Hour "deductible."

What is the result of these requirements? There is likely no coverage.

## **Dependent Property Coverage**

Before we look at the coverage, let's first define what qualifies as a dependent property. Dependent properties eligible for coverage in the business income form include:

Buyers (ISO terminology - Recipient Locations);  
Suppliers (ISO - Contributing Locations);  
Providers (ISO - Manufacturing Locations); and  
Drivers (ISO - Leader Locations).

Let's review the language from one of the four endorsements:

*A. We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to "dependent property" at the premises described in the Schedule caused by or resulting from a Covered Cause of Loss.*

Note the common requirements found in this language. There must be direct physical loss or damage and the damage must be from a covered cause of loss. Given the similarities, how does this coverage respond? Applying the same reasoning as that found in the other two sections, there is no coverage.

## **The Moral of the Story**

In the business income policy, with or without the CP 01 40, there is no coverage – unless:

Courts ignore the meaning and reality of property damage;

Courts ignore the pollution exclusion (in the absence of the CP 01 40); or

Governmental authorities intervene.

Even if coverage is found – there is generally a 72-hour deductible. The virus doesn't live in the air on surfaces beyond that amount of time.

Here is the final reality, is it the property or the people that is the problem? Is this a biological issue or a property damage issue? The commercial property policy is not designed to cover biological issues, it is for property issues.

To end this article, given the policy wording and requirements, there is no coverage for a business income loss resulting from the coronavirus. But let me give you this final warning – if the insured wants to make a claim, do it and let the carrier decide. However, if the insured is just asking your opinion as to whether coverage exists, you can give it. But don't advise against filing a claim, simply say you don't think it's covered based on policy wording, but that you will still file a claim if the insured wants you to do so.

Source: Virtual University  
 Author: Chris Boggs

## Coronavirus and Workers' Compensation

A pandemic is defined as, "an outbreak of a disease that occurs over a wide geographic area and affects an exceptionally high proportion of the population." Although the media lives by the motto, "If it bleeds, it leads," declaring a pandemic anytime more than a few people contract a virus, this time even the World Health Organization (WHO) is warning of a possible Coronavirus (COVID-19) pandemic with one Coronavirus expert, Professor Gabriel Leung, Chair of Public Health at Hong Kong University, saying that **unchecked**, the virus could infect 60 percent of the global population.

My intent is not to accuse the media of sensationalism, nor to intimate that WHO is overreacting (I don't think they are); my purpose is to answer the question, what makes an illness an



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“occupational illness” and thus compensable under workers’ compensation? More specifically, how does or might workers’ compensation respond to the Coronavirus?

Two tests must be satisfied before any illness or disease, including the Coronavirus, qualifies as occupational and thus compensable under workers’ compensation:

1. The illness or disease must be “occupational,” meaning that it arose out of and was in the course and scope of the employment; and

The illness or disease must arise out of or be caused by conditions “**peculiar**” to the work.

Whether an illness arises out of and in the course and scope of employment is a function of the employee’s activities. The simplest test toward determining whether an

injury “arises out of and in the course and scope of employment” is to ask: Was the employee benefiting the employer when exposed to the illness or disease? Be warned, this “test” is subject to the interpretations and intricacies of various state laws.

Qualifying as “occupational” is the relatively low hurdle. The higher hurdle is whether the illness or disease is “peculiar” to the work. If the illness or disease is not **peculiar** to the work, it is not occupational and thus not compensable under workers’ compensation. An illness or disease is “peculiar” to the work when such a disease is found almost exclusively to workers in a certain field or there is an increased exposure to the illness or disease because of the employee’s working conditions.



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For example, black lung disease in the coal mining industry is a disease that is **peculiar** to the work of a miner. Coal miners are subject to prolonged exposure to higher-than-normal concentrations of coal dust leading to black lung disease. This makes the disease peculiar to the coal mining industry.

Another example of an exposure “peculiar” to the work is a healthcare worker contracting an infectious disease such as HIV or hepatitis as a result of contact with infected blood. The worker’s unusual or “peculiar” exposure to such diseases results in an illness that is occupational and compensable.

Qualifying an illness or disease as occupational and, more importantly, peculiar to the work (and thus compensable) may ultimately require industrial commission or court intervention to sort medical opinion from legal facts. No one “test” is available to declare an illness or disease compensable or non-compensable; each case is judged on its own merits and surrounding circumstances.

Concluding that an illness is occupational, peculiar to the work and ultimately compensable is not necessarily based on the disease in question but on the facts surrounding the worker’s illness. Factors investigated and considered by medical professionals and the court include:

- The timing of the symptoms in relation to work: Do symptoms worsen at work and improve following prolonged absence from work (in the evening and on weekends);
- Whether co-workers show or have experienced similar symptoms;
- The commonality of such illness to workers in that particular industry;
- An employee’s predisposition to the illness (an allergy or other medical issue); and

The worker’s personal habits and medical history. Patients in poor medical condition (overweight,

smokers, unrelated heart disease, etc.) and/or with poor family medical histories may be more likely to contract a disease or illness than others in similar circumstances. Bad habits and poor medical history (and heredity) cloud the relationship between the occupation and the illness. For example, smokers may be ill-equipped to fight off the effects of illnesses to which others may have no problem being exposed.

## **What About Coronavirus?**

Judged against the qualifying factors presented, does **any** disease or virus declared a pandemic create a true workers’ compensation exposure? Does the Coronavirus create a workers’ compensation exposure? The short answer is, “not likely.” Other than the fact that the Coronavirus is currently garnering intense attention, in most cases it is no more occupational than the flu.

### ***Unless!***

Only if it is proven that the employee has an increased risk of contracting the virus due to the peculiarity of his or her job might the Coronavirus be considered occupational and thus compensable. Remember, compensability as an occupational illness requires something about the job that increases the risk of exposure and illness.

As intimated earlier, healthcare workers may be able to prove the necessary peculiarity – being face-to-face with sick people ALL day – to assert a compensable injury.

## **Which Policy Responds to Qualifying Occupation Illnesses and Diseases?**

While the Coronavirus has a relatively short gestation period, other occupational illnesses and diseases often have long “gestation” periods. Employees may be exposed to the

harmful condition for many years before the illness manifests. It is also possible that the employee doesn't contract the disease until years after the exposure ends.

The workers' compensation policy specifically states that the policy in effect at the employee's *last* exposure responds to the illness — even if the employee is working for another employer or even retired at the time the disease manifests itself.

unlikely that both the "occupational" and "peculiar" thresholds can be satisfied to make most illnesses "compensable" for the vast majority of individuals; the same is true of the new Coronavirus.

Source: Virtual University  
Author: Chris Boggs

## The Coronavirus Isn't Special

Coronavirus may be a humankind exposure rather than one peculiar to most employments. Contracting the virus at work is not enough to trigger the assertion that it is a compensable occupational illness. To be occupational and compensable requires something peculiar about the work that increases the likelihood of getting sick. It is



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## Coronavirus Scams Continue – Be Aware



I was hoping to not be writing about COVID-19 this week – trying to get back to normal. Unfortunately, we may be in the midst of redefining normal.

The number of important coronavirus scam warnings and other alerts continue. Again, thanks to my friends at Scambusters for allowing me to reprint their latest information.

Scammers have added misery to an already bad situation by devising all manner of schemes to trick people either into handing over their money or downloading malware onto their PCs.

Our first coronavirus (COVID-19) warning, however, is aimed at people who, as a result of the illness, find themselves working from home for the first time. Read the details below.

### Computer Viruses and Coronavirus

If your employer has told you to work from home to reduce the risks of coronavirus infection, that may seem like good news.

But are you expected to use your own computer? If so, does it have the same level of security your work devices have?

Most firms use the highest levels of computer security available. If you don't and you're navigating the Internet, receiving emails, or communicating with your company network, you could be at risk of a computer virus instead of coronavirus.

As well as ensuring your security software is up to date, you should seek guidance on device security from your employer.

Another risk is that you'll be more dependent than usual on email and Internet communication. Scammers and hackers know this and will almost certainly increase their spamming activities and social media hacking.

Be alert!

### Fake Coronavirus Dashboard Sites

There are already scores, maybe hundreds, of scam websites pretending to carry updated information on the outbreak.

You can see what one of these sites looks like here: <https://tinyurl.com/covid-scam-map>. They look official, they have maps and statistics and, unfortunately, look almost identical to some of the genuine "dashboard" sites that have appeared in the last couple of weeks.

But their purpose is not to inform. As tech information website TheNextWeb.com (see link above) warns:

"Attackers design websites related to coronavirus in order to prompt you to download an application to keep you updated on the situation. This application doesn't need any installation and shows you a map of how COVID-19 is spreading.

"However, it is a front for attackers to generate a malicious binary file and install it on your computer.

"Just to be clear, these websites pose as genuine maps for tracking coronavirus, but have a different URL or different details from the original source."

Once installed, the software steals data and infects computers with its own virus.

The advice is to use only verified sites to check data. That's easier said than done, especially after one of the best and leading info sites from Johns Hopkins University was hijacked last week by crooks and turned into a downloadable malware bomb.

The best rule to follow is to confine your curiosity to the CDC and other official health sites. But if you must visit data dashboard sites, never, but never, download supposed maps of in-

fections. They're nearly all malware-laden.

## Coronavirus Typosquatters

We've written about typosquatting before ([Beware of Typosquatting and New Identity Theft Warnings](#)). It's when crooks set up websites with almost identical spelling to a genuine site. They might just switch a couple of letters around. They know which letters are likely to be mistyped and name their sites accordingly.

Victims who didn't check their address bar when typing then find a page that looks exactly like the one they were seeking — in this case, something connected with health, local community activities, local government guidance, and so on.

Reporting on this, researchers at security firm Proofpoint discovered a site mimicking Vanderbilt University Medical Center in Nashville. The fake site just omitted the 'l' in "Vanderbilt."

In this case, the aim was to install malware, but typosquatters are also hoping to phish for personal information by asking visitors to create accounts. They know that some people (not our readers we hope) will just use the same sign-on details they have for other accounts.

When you're visiting any site, not just coronavirus-related, you should always double check your spelling before hitting that "Enter" key. However, we all know how easy it is to overlook a mistyping, so watch out for any site that asks you to open an account or download an attachment or app.

## Coronavirus Travel Scams

Finally, a general warning to people who may be affected by travel restrictions.

Scammers and spammers are likely to be messaging and posting on social media sites offering products relating to travel safety or randomly sending out emails about changed travel plans.



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For example, airlines may be offering discounted tickets, so will the scammers.

Or, in one reported case, mass emailings find their way into the inboxes of people who recently bought tickets, advising them of things like new charges for seat changes or changing travel plans.

The aim is to get victims not only to unwittingly pay the scammers, but also to harvest their credit card details.

If you receive one of these messages, check directly with either the airline or the agency you booked with.

We're sure you — and we — will be encountering more coronavirus scams in the coming weeks. For your own security, please share this alert and stay tuned to Scambusters for further information. We'll be back with more coronavirus scam news.

## Work from Home Resources

Any good business contingency plan tries to think about the unthinkable and make plans for how the organization should react.

These contingency plans are being tested with the spread of the COVID-19 virus. In this issue of *TechTips*, I am providing a list of information resources you might find helpful as you make plans for transitioning to a virtual and work at home environment, at least for the next few weeks.

Some of these resources you have most likely encountered by other organizations. I include them here to make sure you have access to the information. This list is not comprehensive. Use it as a starting point and add to other information you're gathering.

## Work from Home Resources

John Hopkins University is [tracking the global cases](#) — in near real-time — of COVID-19 [on this website](#).



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The Agents Council for Technology has created a [website page with information and resources about the Coronavirus](#).

[Updated] – Ron Berg, Executive Director at ACT, let me know that they have added an updated version (in cooperation with Sharon Emek and [WAHVE](#)) of the [Remote Work Best Practices Guide](#). This guide is comprehensive and provides solid guidance for those being compelled to move to a remote workforce.

Many software vendors are providing free or enhanced access to their platforms to better support work at home and remote worker options. [TechSmith, creators of Snagit, is one example.](#)

As a reminder, my *TechTips* from last week provided some [suggestions on how to protect yourself from Coronavirus Scams](#).

### **A couple of other TechTips you might find helpful include:**

[Google Makes Remote Desktop Access Easier](#)

[Remote Work: What To Weigh Before Going Through With It – Episode 35](#)

[Stop Taking Meeting Notes: Record & Transcribe Instead](#)

### **Some other resources that might help:**

[5 Habits for Crafting the Perfect Remote Work Day](#)

[A Quick Security Checklist for Remote Workers](#)

Wall Street Journal – [Working From Home Because of Coronavirus? There Are Your Tech Fixes](#)

### **Video Platform**

If you have people working remotely, you will want to work hard to stay in touch. Utilizing video conferencing is a great way to do that. There are many meeting and video sharing platforms available to you. A well-known platform includes [GoToMeeting](#).

I use [Zoom](#) as my video conference platform. A



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free version of the Zoom meeting platform is available. This free version is limited to 40 minutes for group meetings. It allows unlimited one-to-one meetings. Plans with additional time and participants start at \$15 per month per host.

## **[Updated] Regulatory Compliance**

If you are contemplating moving service staff to remote access, double-check to make sure your state allows staff to work from home. For example, in Florida, a person with a 4-40 license (service staff) cannot "transact insurance" outside of the office.

The [Florida Association of Insurance Agents](#) (FAIA) has detailed information on this limitation. I do not know how other states might handle a similar situation. Check with your state association to make sure.

## **Stay Calm and Carry On**

I don't know what's going to happen in the next few months. I do know that as an industry and as a country, we have faced many challenges in the past. And, we have

successfully navigated those challenges. So stay calm and carry on. Your clients need you.

What tools are you using to support remote employees and engage with your clients?

Source: TechTips  
Author: Steve Anderson  
[techtip@steveanderson.com](mailto:techtip@steveanderson.com)

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## Government Mandates that Insurers Pay for Uncovered Claims

New Jersey has a bill that would force insurers to pay for business income losses even if their policies clearly don't cover the claims. It was thought that the bill was dead, but according to the articles below, it is alive and being voted on tomorrow.

["Update: New Jersey Legislature To Vote On Bill Requiring Insurers to Cover COVID-19 Business Interruption Losses"](#)

["COVID-19 and The New Jersey Assembly Bill 3844"](#)

According to the vague language of the bill, it appears that insurers who pay uncovered claims could apply for reimbursement from some sort of mechanism that would be shared by other insurers, presumably even if they don't even write that type of coverage. Again, the proposed bill is not clear on exactly how this confiscation of funds would go down.

At the federal level, on March 18, a number of members of Congress wrote the CEOs of four industry groups asking that they voluntarily pay business income claims involving the coronavirus, again presumably whether covered or not. Two of the groups are agent and broker associations which are not parties to these insurance contracts, nor do they have any financial resources that could be brought to bear. The fact that they were included indicates that Congress lacks a fundamental understanding of how the industry works.

I am not an attorney but my understanding is that many legal experts believe that confiscatory government orders or legislation violate Article 1, Section 10, Clause 1 of the U.S. Con-

stitution. There is an interesting [Wikipedia discussion](#) of whether a state can effectively modify a private contract in the public interest. It indicates that three tests must be met according to the U.S. Supreme Court. [Another article](#) outlines the basis for review.

Most recently, in *Sveen v. Melin*, 138 S. Ct. 1815 (2018), the SCOTUS ruled that such laws are void if they "substantially impair" a contract. My guess is that insurers would assert that mandating that they pay for losses not covered by their contracts substantially impairs them.

If such laws are passed, expect the industry to challenge them in court. In the case of New Jersey, this may be difficult. In researching this article, I came across my instructor notes from an old agent E&O loss control seminar which cited this 1988 New Jersey court decision:

*"The underlying public policy in this area is quite clear when the potential for damage to the environment is this great. Consequently, the health, safety and welfare of the people of this state must outweigh the express provisions of the insurance policy in question."*

According to my notes, the court case is *Summit Associates v. Liberty Mutual*. As I recall, it was a claim involving a SuperFund site where the court admitted that the policy excluded pollution and cleanup, but cited "public policy" as the basis for overriding the language of the contract. I don't recall if the case was appealed and, if so, what was the final disposition.

Confiscatory legislation targeting one industry is potentially far more dangerous to a republic than the virus itself.

Why single out the P&C insurance industry to pay for business closures or curtailments mandated by governmental entities? Why not confiscate funds from the life insurance industry? The health insurance industry?

Why not require contributions from policyholder attorneys as well? And accounting firms? And labor unions? And grocery stores? And toilet paper manufacturers? Or, for that matter, hit up any business that isn't adversely impacted and any individual who is still employed? It makes as much sense.

And what happens when P&C insurers who are forced into insolvency can't pay policyholders who have claims actually covered by their policies? Ah, we assess other insurers via guaranty funds...if there are any left to assess. And what about the hundreds of thousands of insurance agencies and staff members formerly employed by the industry? Who's going to compensate them?

This is largely not an insurance issue. It's not really a business issue. It's a societal issue and no single industry should be expected to solve it. Probably the greatest beneficiaries of these efforts are members of the trial bar who stand to profit unless the laws confiscate their earnings too.

Updates on this article:

<https://www.insurancejournal.com/news/national/2020/03/25/562263.htm>

Wisconsin Mandates That Insurers Cover Auto Delivery Exposures?

I posted a couple of days ago that something insurers could do is voluntarily cover delivery if their policies excluded it. Given the reduced exposure of less people overall driving, the loss experience could be a wash. However, I suggested they do this by issuing short-term endorsements, not just arbitrarily saying they won't exclude such losses.



# *Thank YOU!*

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It's important to expand coverage contractually.

Now it appears that Wisconsin has mandated that personal auto insurers cover delivery even if their policies exclude and that CGL policies include hired and nonowned auto coverage for deliveries:

<https://www.insurancejournal.com/news/midwest/2020/03/24/562205.htm>

Wisconsin's action is disturbing if they are MANDATING that insurers cover something not covered by their contracts. I question if that is within their regulatory authority.

It also begs the question that, if insurers go along with such an order as a matter of goodwill, what's to prevent states from mandating that they pay BILLIONS in uncovered business income claims?

One other issue involves, for example, a mandate that a CGL policy covers H/NO auto claims. How do you adjust a claim for a coverage for which there is no policy language? To add this coverage, you need to actually issue an endorsement to modify the contract language. Otherwise how do you know exactly what is covered and for how much?

There is a right way and a wrong way to respond to this crisis and probably a legal way and an illegal way. Some of these hairbrained proposals cropping up clearly aren't the right way.

Excellent case law analysis of the Constitutionality of mandating coverage on insurance policies that clearly do not otherwise cover a loss:

<https://www.stroock.com/publication/the-constitutionality-of-government-action-mandating-covid-19-business-interruption-coverage/>



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Louisiana Agent 24

# IIABL EDUCATION & EVENTS CALENDAR

Webcasts			
<a href="#"><u>E&amp;O Risk Management</u></a> Click above for schedule Available on Demand	<a href="#"><u>Ethics</u></a> Click above for schedule Available on Demand	<a href="#"><u>Flood</u></a> Click above for schedule Available on Demand	<a href="#"><u>Commercial &amp; Personal Lines Courses</u></a> Click above for courses & dates for 2019
<a href="#"><u>2020 Webinar Calendar</u></a>		 <p>A New Agent Training Solution  <b>INTENTIONAL TRAINING</b>  to Prepare For <b>TOMORROW</b>  Pick &amp; Play Your Professional Bundle:  <b>Basic &amp; Beyond</b>  <a href="#">CLICK HERE TO GET STARTED!</a> </p>	 <p><b>BIG i</b>  HIRES.</p>
Seminars			
To be Announced			
Events			
To be Announced			

# MARCH IIABL BOARD OF DIRECTORS MEETING

IIABL President Elect, Brenda Case welcomed the Young Agents Committee members who were in attendance for the board meeting. Young Agent Committee Chair, Janette Campbell, thanked the board for the invitation.

IIABL Legislative Chairman, Harry Kelleher, discussed IIABL's legislative agenda for the 2020 Regular Session of the Louisiana Legislature. The top priority for IIABL will be passage of the Omnibus Premium Reduction Act of 2020 found in SB 418 by Senator Kirk Talbot and HB 9 by Representative Ray Garofalo. The bill will bring Louisiana's legal system in line with other states in exchange for a mandatory auto insurance rate reduction:

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your case is valued at \$50,000 or higher, a judge rather than a jury, will decide your case. The end result is a trend of cases with higher value, but low enough to avoid a jury in the hopes of landing the right judge. Maryland has the next highest threshold at \$15,000 and 32 states have no jury trial threshold.

## **End the collateral source rule.**

The current judicially made law prohibits evidence of what was actually paid by a plaintiff in medical bills and allows only evidence of full-price or "sticker price" medical bills to be submitted into evidence, without regard to contractual adjustments for health insurance or limits on reimbursement established by public payors. This allows plaintiffs and their attorneys to recover a windfall that far exceeds both their actual liability for medical care and the costs of health insurance premiums they have paid.

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**Remove the direct action statute.**

Louisiana is one of only three states where a plaintiff can sue you and your insurance company. Most states recognize that bringing an insurance company into a lawsuit encourages a jury's tendency to award larger damages. It's human nature to see a company in a different light than a real person, but in the end it's a real person paying a very real bill.

**Extend the prescriptions for delictual (torts) actions from 1 year to 2 years for motor vehicle accidents.**

A compromise providing the other elements of the bill remain in place.

**Eliminate the seat belt gag order**

Seat belt usage is currently hidden from juries according to state law, even though unbelted occupants typically have medical costs three times higher than those wearing seat belts – as required by law.

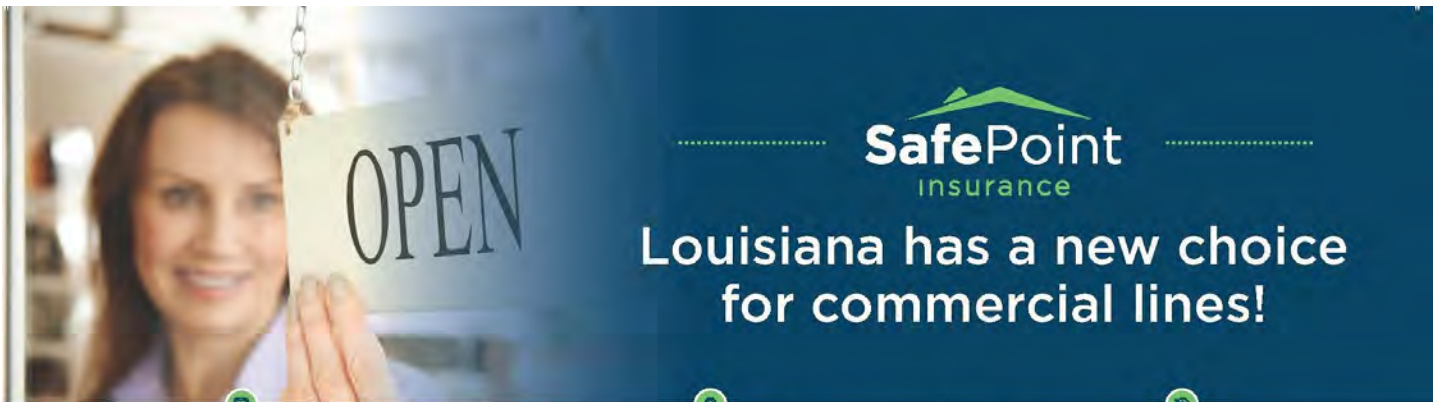
**Require a mandatory 10% rate reduction for personal auto insurance.**

The bill also establishes a mandatory review of commercial auto insurance to lower rates when actuarially justified. This bill will help rebuild competition in our markets, providing real relief for Louisiana ratepayers.

Harry Kelleher advised the IIABL Board that the trial lawyer opponents of the auto/tort reform effort have devised a strategy to blame high auto insurance premiums in Louisiana on insurance companies. They have created a front organization called Real Reform Louisiana, which calls on the legislature for "insurance reform." <https://www.realreformla.com/>

Unfortunately, Governor John Bel Edwards has expressed support for "insurance reform." When addressing the LABI Annual meeting, Edwards said: "But we shouldn't lose sight of the fact that our insurers are charging people more for auto liability insurance because they are poor, because they are widows, because they are blue-collar and now, we are finding out, because they might be soldiers subject to a deployment," Edwards said. "We need to do more on the regulatory side to make sure they are not allowed to have premium differentials based on those reasons." Governor Edwards has expressed support for a package of bills introduced by Senator Jay Luneau, a trial lawyer from Alexandria, Louisiana.

<b><u>Instrument</u></b>	<b><u>Author</u></b>	<b><u>Current Status</u></b>	<b><u>Considered</u></b>
<a href="#"><u>SB13</u></a>	<a href="#"><u>LUNEAU</u></a>	Pending State Insurance	INSURANCE RATES: Prohibits insurance rate determinations based on risks classified by the gender of an insured over the age of twenty-five. (8/1/20)
<a href="#"><u>SB14</u></a>	<a href="#"><u>LUNEAU</u></a>	Pending State Insurance	INSURANCE RATES: Prohibits insurance rate determinations based on risks classified by the insured's credit score/rating. (8/1/20)
<a href="#"><u>SB15</u></a>	<a href="#"><u>LUNEAU</u></a>	Pending State Insurance	INSURANCE RATES: Prohibits insurance rate determinations based on risks classified due to the fact that the insured is a widow or widower. (8/1/20)
<a href="#"><u>SB16</u></a>	<a href="#"><u>LUNEAU</u></a>	Pending State Insurance	INSURANCE RATES: Prohibits insurance rate determinations based on risk classifications due to the fact that the insured is deployed in the military in excess of six months. (8/1/20)



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Kelleher noted that there are a large number of auto/tort reform bills that have been introduced, but the primary effort will be to pass the Omnibus bill. There are also some important oil & gas tort reform bills that will be considered during this session.

Chairman Kelleher expressed concern to the board about a Department of Insurance bill that has been introduced to implement the NAIC Cybersecurity Model Act. **HB 614** would give the Insurance Commissioner broad authority to regulate insurance licensees' compliance with an extensive list of cybersecurity requirements. IIABL is opposed to the bill in its current form because of concerns about the ability/expense of compliance for insurance agencies, and because of concerns about requirements related to third-parties. IIABL will work with Commissioner Donelon to try to amend the bill to make it reasonable for agents or will do our best to kill the bill if an appropriate compromise cannot be reached.

David Tatman, with the Tatman Group, who

lobbies for IIABL, talked about the importance of the 2019 fall election and the quality of the new legislators. Tatman talked about the positive makeup of committees and legislative leadership and the impact on the auto/tort reform efforts.

Jeff Albright reviewed the top 40 most important bills introduced in the legislative session so far.

Finally, Chairman Kelleher discussed the importance of maintaining public pressure on the auto/tort reform effort. LABI created the Louisiana Free Enterprise Institute to provide education and media support. Kelleher urged the board to financially support the Louisiana Free Enterprise Institute. On a motion by Bret Hughes with a second by Robert Riviere, the IIABL Board voted to approve contribution of \$25,000 to the Louisiana Free Enterprise Institute without objection.

IIABL Secretary-Treasurer Don Stiel presented the 2020-2021 IIABL Financial Budget to the board and answered questions. On a motion by Paul Owen with a second by Stuart Harris, the



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IIABL Board voted to approve the 2020 budget without objection.

IIABL Secretary-Treasurer Don Stiel and Merrill Lynch investment advisor David Ellis presented a proposal from the IIABL Finance Committee for the board to add an investment spending provision to the current IIABL Investment Policy. The proposal is for the Finance Committee to review IIABL investments annually. When cash from investments is needed to support IIABL operations, the Finance Committee can recommend to the board that cash from investments be transferred to the operating account in the amount of the greater of: 1) 3% of the last three years rolling average of the value of investments, or 2) the actual interest and dividends paid on investments in the past year. [On a motion by Lee Schilling with a second by Eugene Montgomery, the IIABL Board voted to approve the motion without objection.](#)

IIABL CEO Jeff Albright gave the board a report on strategic plan implementation and an update on the IA Action Partners initiative to work with other Big I state associations

IIABL President Joey O'Connor updated the board on association business since the last meeting and a preview of the June 14-17, 2020 IIABL Convention at the Sandestin Beach Hilton.

IIABL Secretary-Treasurer Don Stiel presented the December 2019 IIABL Financial Statement. On a motion by Eugene Montgomery, with a second by Ross Henry, the IIABL Board voted to approve the December 2019 financial statement without objection.

There being no further business the meeting was adjourned.

## How Coronavirus will Impact Agents and Brokers

By: Bobby Reagan  
Reagan Consulting

We are aware of the massive disruptions currently facing every individual and industry in the US as a result of the Coronavirus. Some people, firms, and segments of our economy will be affected more significantly than others. In the big picture, those of us in the insurance distribution space (both wholesale and retail agents and brokers) are more fortunate for a number of reasons, including:

- People and businesses cannot stop buying insurance. We are not selling optional luxury goods.
- The majority of agent/broker income will continue despite the downturn in payroll and receipts.
- Future revenues are likely to be buoyed by the potential hardening of the P&C and Health markets.
- Agent/Brokers' work remains largely uninterrupted as they can effectively serve the insureds from remote locations through email, phone, and electronic conferencing.
- The value of brokers will hold up better than most companies in other industries as evidenced by a current comparison of the broker stocks to other market segments. As further evidence, in the middle of our country's economic collapse in 2008 and 2009, the median agent/broker in our database saw their annual per share values drop less than 2%, while other industry segments saw values drop by 50, 60 or 70% or more.
- As a result of the above factors, our segment of the economy and insurance market (insurance distribution) is truly a safe harbor and will continue to be perceived as such by those looking to remain privately-held and those looking to make investments in our space.

With the immense difficulties that many insureds are going to have over the next six to twelve

months, life for agents and brokers will be challenging as well. We will find many insureds unable, or at least slow to pay their premiums and will have to deal with insolvencies (although the government may provide a backstop and prevent much of this). It will also require agents and brokers to find ways to respond to their insureds' financial and operating challenges as their insureds change/adapt the way they are forced to do business. This may simultaneously cause agents and brokers to "elevate their games" through more effective management of data, more effective use of technology, strategic alignment with other peer organizations or providers and the elimination of inefficiencies. To the extent that "necessity is the mother of invention", our industry will be faced with necessities that will compel invention, creativity, flexibility and elevated performance.

One final thought for all of us to consider. To the extent that we are in an industry that has per-

formed exceptionally for the last ten years and an industry that will weather the storm better than most, we have an opportunity, if not a responsibility, to look around us and seek to help those that will be suffering in the coming months. There are many waiters and waitresses that will lose their jobs with "in-restaurant" dining being suspended. Many of those associated with hotels and airlines will suffer. There are a lot of highly leveraged businesses selling discretionary products and services that will suffer. All of the charities and non-profits that rely on contributions will likely have to cut back services and staffing. We would encourage everyone within our industry to look around in your community and find those that need your help and be willing to provide it to them. "To whom much is given, much is expected."

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FCCI Insurance Co Monroe Guaranty Ins Co National Trust Ins Co	19-Private Passenger Auto	14.7%	\$1,593.998	448	Requested: New: 10/2/2020 Renewal: 10/1/2020
American Fire & Casualty Ohio Casualty Ins Co Ohio Security Ins Co West American Ins Co	17-Other Liability Delayed Adoption	15.0%	\$2,333,805	4,884	Requested: New: 7/1/2020 Renewal: 7/1/2020
Progressive Security Ins Co	19-Private Passenger Auto	0.8%	\$90,887	15,261	Requested: New: 1/20/2020 Renewal: 2/10/2020
American Fire & Casualty Ohio Casualty Ins Co Ohio Security Ins Co West American Ins Co	5—Commercial Multiple Peril	6.7%	\$517,486	1,962	Requested: New: 9/1/2020 Renewal: 9/1/2020
Manufacturers Alliance Ins Co Pennsylvania Manufactur- ers' Association Ins Co Pennsylvania Manufactur- ers' Indemnity Co	16—Workers Comp	-8.1%	-\$310,730	255	Requested: New: 5/1/2020 Renewal: 5/1/2020
Property Insurance Assoc of Louisiana Revised Rate Only	1—Property	-2.4%	-\$809,484	25,846	Requested: New: 8/1/2020 Renewal: 8/1/2020
SAFECO Ins Co Revised Rate Only	4—Homeowners	2.6%	\$1,103.881	19,125	

Rate & Rule Filings continued on page 34

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