



PROTECTING ASSETS.  
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March 26, 2020

To: Our Valued Sonic Franchisee Community  
From: The IMA Team  
Re: COVID-19

First and foremost, we trust you and your families are safe and taking the proper precautions to protect against the Coronavirus. This is truly uncharted territory we are faced with. Our goal has been and always will be to provide proper information and guidance, so you know what to expect and there are no surprises.

Many have inquired as to how your insurance program will respond to COVID-19. First, we must give a disclaimer. As your broker, we are not the ones that adjudicate claims or interpret the policy terms and conditions. That responsibility lies with the insurance carrier. However, we can give you our interpretation of the potential terms and meaning that will be discussed during the claim process.

Below, we have tried to identify areas of your insurance program that you may have questions on. Should you find you have further questions, please don't hesitate to reach out to those listed at the bottom of this document.

**Property:** Property coverage includes your buildings and business personal property. Commercial policies vary greatly, but a standard business income policy requires physical loss or damage to insured property by a covered peril to trigger a claim. The policy language that applies will be the following: "We will pay for direct physical loss of or damage to Covered Property caused by or resulting from a Covered Cause of Loss." Historically, "direct physical loss of or damage" means that there actually has to be tangible damage to the insured property. In addition, not only are diseases and viruses not a covered peril, but there is a specific "virus or bacteria" exclusion contained in the policy. Coronavirus infection does not fulfill these requirements and therefore COVID-19 would not trigger coverage.

**Business Income:** The same "trigger" applies to Business Income as does Property. For Business Income to be triggered, it must result from a covered peril. The actual or potential impairment of operations must be caused by or result from direct physical loss or damage by a covered peril to property. As indicated above, we do not believe COVID-19 would qualify for a direct physical loss and is an excluded peril and therefore no coverage would apply.

Your policy contains coverage for "Civil Authority" where civil authorities order the closure or restrict access to your premises however it is again predicated on "direct physical loss of or damage to Covered Property".

**General Liability:** CGL policies may be implicated in the COVID-19 outbreak if customers are infected and allege they were infected on the business's property. The policy responds to bodily injury caused by an occurrence. Whether or not an insured's failure to prevent exposure to COVID-19 is an "occurrence"



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under a CGL policy will most likely turn on whether the insured foresaw the injury. The burden is on the injured party to prove that the virus was contracted at your location, as a result of your company's negligence. This is a big hurdle for the claimant to overcome. However, that does not prevent them from filing a claim. If a claim or suit is formally filed, you should report to your general liability carrier. If a claim is filed, the carrier may send a reservation of rights letter while they are determining if coverage is afforded. There are several exclusions they may cite in the reservation of rights letter. The Pollution exclusion found under the policy which states: "This insurance does not apply to: Pollution" "Pollution" is defined as "any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste." The carrier would have to prove COVID-19 falls under the definition in order to disclaim coverage. The Fungi or Bacteria Exclusion may also be cited. We would argue that Covid 19 is neither Fungi nor Bacteria. Lastly, they may cite the "Expected or intended" exclusion. So, whether the CGL insurer steps in to defend and indemnify an insured who faces such a claim will depend upon the facts of each claim.

**Worker Compensation:** The workers compensation policy is designed to cover claims "arising out of and in the course of employment". Claims must meet both criteria. Workers compensation is governed by state law, but the impression is most of these cases will likely be deemed non-compensable because the employee is at no greater risk of contracting the disease due to their employment.

An employee may allege this is an occupational disease. However, it must meet both of the following conditions. The disease must be caused by conditions characteristic of and peculiar to an occupation and the disease is not an ordinary disease of life to which the general public was equally exposed. If an employee states they were infected as a result of their employment, submit the workers comp claim through the appropriate channels.

**Restaurant Recovery:** The restaurant recovery policy is designed to cover claims involving the following "insured events": accidental contamination, malicious tampering, product extortion, or adverse publicity of the "insured product". Loss under this policy may potentially involve expenses associated with business interruption/extra expense, recall costs, rehabilitation expenses, and consultant and advisor costs. For this policy to trigger the insured event must involve the "insured product". As it relates to COVID-19 business interruption, the restaurant recovery policy will not trigger coverage as the consequence of the business interruption does not meet the definitions of "insured event" and "insured product". As stated in the previous coverage sections, we do not adjudicate the claims, but are able to assist in reporting of any claims to the carrier for their official coverage position.

As mentioned above, Business interruption and loss of rents claims for COVID-19 related losses will face some coverage hurdles. Across the insurance industry we expect to see initial carrier denials based on the requirement for direct physical loss to property. However, it is still unclear how this requirement will ultimately play out in the face of COVID-19 claims. There are potential arguments based on contamination cases that the actual presence of a virus constitutes physical damage. There may also be arguments based on the community spread, government orders, and the lack of access to property. These positions depend significantly on the particular policy language, and whether or not they are



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ultimately successful will likely turn on future court rulings. There is a lot of conversation about coverage claims and things are evolving quickly. Any decision by the courts or legislation enacted by state or federal authorities could alter the existence of coverage for such losses. We are not the insurance carrier and the ultimate decision regarding coverage falls with the insurance company, however filing a claim with the insurance company would be the first step to pursuing any insurance recovery. You have the right to submit a claim, regardless of any coverage hurdles it might face. Submitting an insurance claim and/or the denial of an insurance claim could also be a requirement for any future applicable government assistance. If you wish to file a claim with your carrier, you may follow the normal process for submitting claims.

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