

Wisconsin and Minnesota Businesses Seek Coverage for COVID-19 Business Interruption Losses in State and Federal Class Actions

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Over the last week, pandemic-related insurance lawsuits have continued to be filed nationwide. Several new notable class action filings were recently submitted in Wisconsin state and federal courts that seek business interruption insurance coverage.

In the [first state court suit](#), a claim was made under a policy issued by the Cincinnati Insurance Company to the Pabst-Riverside Theater Group, while the [second suit](#) involves policies issued by Society Insurance to Colectivo Coffee Roasters and Tandem Restaurant.

In the two filings, the businesses allege they were forced to close after Governor Tony Evers issued Wisconsin's Safer at Home order and that they filed claims for business interruption coverage with their insurers and were denied coverage. If the judges assigned to these cases certify the requested classes, any business covered and denied by either Society or Cincinnati Insurance could join the respective case. In news media reports, the attorney filing these two Wisconsin state court filings indicated he believes he is the first to file a class action COVID-19 business interruption coverage action in the United States.

The Wisconsin Office of the Commissioner of Insurance (OCI) has issued a statement addressing the scope of business interruption insurance:

This is a serious concern that we've discussed at our agency and with the industry. We've also heard directly from consumers, legislators, advocacy groups, and others in our state.

Business interruption insurance was generally not designed or priced to provide coverage for pandemics or public health emergencies that necessitated a large number of businesses suspending operations or activities. Insurance works by pooling risk across a broad group of policyholders to cover losses for those policyholders as they arise. Business interruption policies were not designed or priced to cover losses for all

or nearly all of an insurer's policyholders at once, as is the case with COVID-19. That is why most business interruption policies have exclusions for pandemics.

We understand that this answer doesn't help most Wisconsin businesses. As Wisconsin residents, we deeply feel the impact that this pandemic is having on the health, safety, and economic stability of our communities.

OCI cannot mandate that insurers cover business interruption insurance cover losses associated with COVID-19. Simply put, there wouldn't be enough money to pay every policyholder for their claims. Insurers could become insolvent and be unable to meet the obligations that are currently included in their contracts with policyholders. As we approach the season of spring storms and summer floods, it is critical that insurers can pay out claims to homeowners and businesses that sustain losses for those covered events.

The statement suggests that OCI respects and acknowledges the terms of individual policies control business interruption coverage.

On April 17, 2020, a [federal class action complaint](#) was filed in the Eastern District of Wisconsin by Madison Sourdough—a mill, bakery, café, and patisserie in Madison—and various locations of Willy McCoys—a group of taverns situated in the Twin Cities metropolitan region of Minnesota. Plaintiffs allege they purchased special property coverage from Society Insurance to “protect their businesses in the event that they suddenly had to suspend operations for reasons outside of their control, or in order to prevent further property damage.” They further allege Society's Businessowner's Special Property Coverage Form (Form TBP2 05-15) provides Business Income, Civil Authority, Contamination, Extra Expense, and Sue and Labor coverages which should apply to provide coverage related to their business closures, suspensions or reductions resulting from the COVID-19 executive orders by Evers and Tim Walz, the governors of Wisconsin and Minnesota.

The plaintiffs allege the Special Property Coverage Form issued to each of them contains no exclusion for losses caused by viruses or communicable diseases. Additionally, they maintain that the presence of COVID-19 caused “direct physical loss of or damage to” each applicable “Covered Property,” by denying use of and damaging the properties and causing necessary suspension of operations during a restoration period. Plaintiffs further contend the presence of a virus or disease can constitute physical damage to property and that this has been recognized by the insurance industry since “at least 2006.”

According to the plaintiffs, Society Insurance has denied their claims and “on a widescale and uniform basis, refused to pay its insureds under the Business Income, Civil Authority, Contamination, Extra Expense, and Sue and Labor coverages for losses suffered due to COVID-19, any executive orders by civil authorities that have required the necessary suspension of business, and any efforts to prevent further property damage or to minimize the suspension of business and continue operations.”

The plaintiffs are seeking a declaratory judgment and breach of contract damages. Similar to the two state court filings, businesses covered and denied by Society Insurance—with the same Business Income, Civil Authority,

Contamination, Extra Expense and/or Sue and Labor coverage(s)—will be permitted to join the respective nationwide classes if they are certified.

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