

Questions about insurance coverage due to COVID-19

Status: 21.04.2020

As a result of the spread of Covid-19, there is a considerable loss of income. Many shops had to close, other companies have partially or completely stopped their production due to supplier default and/or to protect their employees. Events and film productions have to be cancelled due to official orders under of the Infection Protection Law or are cancelled for reasons of precaution.

In all these cases, the question arises as to whether insurance coverage exists to cover the resulting loss of income.

I. Business Interruption Insurance

Under typical business interruption insurance policies, which are concluded on the basis of the standard terms and conditions of the German Insurance Association (GDV), insurance coverage only exists if the business interruption is due to property damage. However, as a result of the corona virus, many companies or individual production areas have been closed down or discontinued due to official prohibitions, for reasons of precaution or because of a lack of deliveries from suppliers. In all these cases, the reason for the loss of income is therefore not a property damage. Therefore, generally, there is no insurance coverage under a pure business interruption insurance. Nevertheless, it should be examined carefully on the basis of the insurance conditions in each individual case whether insurance coverage is granted exceptionally.

II. Business Closure Insurance

A special type of the business interruption insurance is the business closure insurance. Depending on the terms and conditions underlying the respective insurance contract, this type of insurance can also provide insurance coverage for loss of income resulting from company closures by order of the public authorities. However, it has to be checked whether the insurance conditions exclude insurance coverage because of a pandemic. It is also decisive whether only business closures due to certain diseases (listed in the terms of insurance) are insured. In such a list, Covid-19 will not be mentioned (due to lack of knowledge of this virus at the time of the agreement). In some cases, the insurers also claim that no official closure order has been issued by the authorities even when closing down on the basis of countrywide regulations. Currently it is open how the courts will decide about these cases.

In summary, for business closure insurance it is also important to consider each case individually on the basis of the insurance conditions as to whether insurance coverage exists

III. Other Individual Insurance Contracts to Protect against Loss of Income

Partly, individual insurance coverage to protect against loss of income also exists within the context of business interruption or business closure insurance policies or similar insurance contracts. Such individual insurance contracts sometimes expressly provide insurance coverage for damages due to transferable diseases and/or epidemics. If such an individual insurance contract exists, the loss of income may be insured in individual cases. This must be checked in each case on the basis of the individual insurance conditions.

IV. Loss or Cancellation Insurance

In some sectors of the economy, particularly in the event or film business, companies often conclude special loss or cancellation insurance contracts. The insurance conditions for these insurances vary from case to case. However, insurance coverage for loss of income caused by Covid-19 is generally only available with these insurances to the extent that losses due to pandemics are not excluded from the insurance coverage. The insurer bears the burden of proof for the existence of a pandemic. However, with respect to COVID-19, the WHO refers to it as a pandemic since 11 March 2020. Therefore, it can probably no longer be argued that it is not a pandemic. If a company has entered into a special loss or cancellation insurance, it should be examined in each individual case on the basis of the insurance conditions whether insurance coverage exists.

V. Protection of Potential Insurance Coverage

As far as an appropriate insurance contract exists, it is not sufficient to be checked on the basis of the individual insurance conditions whether insurance coverage exists. In addition, all necessary measures should be taken to maintain potential insurance coverage. Therefore, possibly insured events should be reported to the respective insurer immediately. As far as business closures or cancellation of events are not ordered by the authorities, the respective steps should be coordinated with the insurer in advance - to the extent possible. If, due to time constraints, such coordination is not possible, at least the closure or cancellation must be notified to the insurer immediately.

Imprint

LOSCHELDER RECHTSANWÄLTE
partnership company
Konrad-Adenauer-Ufer 11
50668 Cologne

Phone +49 (0)221 65065-0, Fax +49 (0)221 65065-110
info@loschelder.de
www.loschelder.de