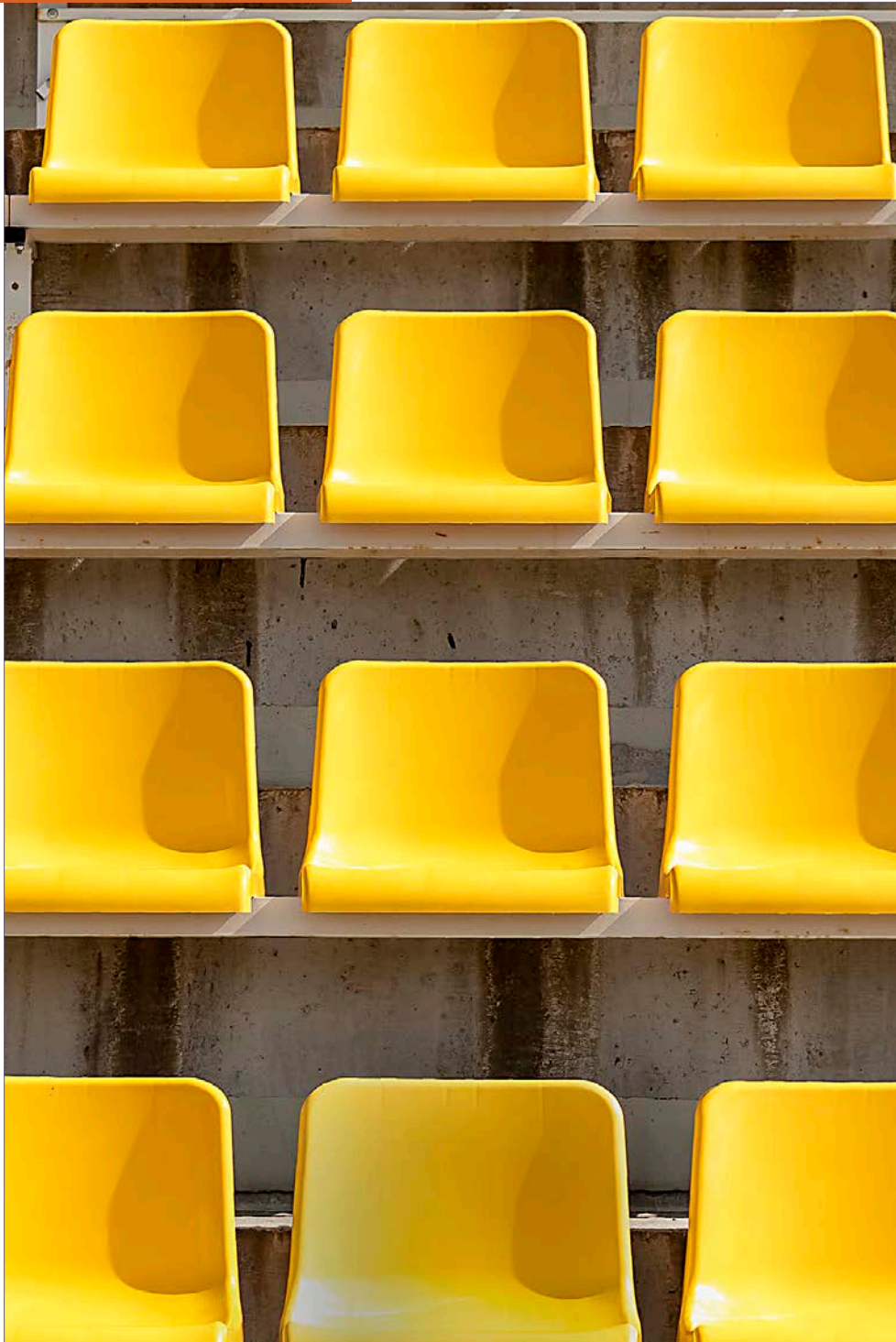


BUSINESS INTERRUPTION CLAIMS

 **BERGER | MONTAGUE**

 **WHITFIELD BRYSON LLP**
ATTORNEYS AT LAW

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FACING A PANDEMIC

AS COVID-19 SWEEPS THROUGH THE NATION AND THE WORLD, MANY PEOPLE AND BUSINESSES FACE UPHEAVAL AND UNCERTAINTY. WHILE HEALTH AND SAFETY ARE THE FIRST PRIORITY, THE CLOSURE OR REDUCTION OF BUSINESSES BY MANDATORY OR VOLUNTARY STAY-AT-HOME ORDERS HAS THE POTENTIAL TO DEVASTATE OR SHUTTER BUSINESSES. WHETHER YOUR BUSINESS IS CLOSED OR WORKING AT REDUCED CAPACITY, OR FACING LAY-OFFS, FURLOUGHS, OR LOST PROFITS, FINANCIAL HELP IS NEEDED RIGHT NOW TO ENSURE ITS CONTINUED SURVIVAL. IT IS PRECISELY FOR SITUATIONS LIKE COVID-19 THAT BUSINESSES PURCHASE BUSINESS INTERRUPTION INSURANCE:

TO MAKE SURE THAT YOU ARE PROTECTED NO MATTER WHAT.

OVERVIEW OF BUSINESS INTERRUPTION INSURANCE

The insurance you purchased for your business may include “business interruption coverage.” This business income insurance provides coverage specifically for the loss of income that your business sustains when there is a suspension or reduction of your business’s operations. The coverage is dependent on what caused the interruption to your business. Certain exclusions and deductibles may apply. Coverage limits and terms may also differ based on the cause of the business interruption. Whether your policy covers interruptions by a viral pandemic, such as COVID-19, will be dependent on and determined by the specific language of your insurance policy.

The first step is to determine if your business has “business interruption coverage.” A review of your full policy, including all endorsements, is necessary to determine whether you have this coverage.

The next step is to figure out what events are covered by the policy. Typically, this is referred to as a “covered peril” or “covered cause of loss.” Most policies will specify the events covered or excluded. In fact, many of the commercial property insurance policies sold in the United States are all risk policies covering property damage or loss except what is specifically excluded. This is why a review of your entire policy is required to determine what coverage exists for your business.

Business interruption coverage typically reimburses a business for a variety of monetary losses. This includes lost revenue, lost profits, closure or reopening costs, and even the costs of litigation. Covered events could include canceled events, supply chain disruption, and blocked access to the premises due to civil authority orders, such as the stay-at-home orders that many states have put in place.

It is important to note that while business interruption coverage in general may often apply for a time period of up to a year, some included coverages may be for a more limited time. Your full insurance policy should identify the coverage limits.

We are aware that many insurance carriers have already begun to deny claims or partially deny claims for business interruption insurance, citing policy terms and claiming that pandemic situations were never contemplated as being covered events. Such denials may be improper, and the time to dispute the denial is usually limited. A prompt review by an experienced attorney is recommended to make sure that your rights are preserved.

4 COMMON REASONS FOR DENIAL OF COVERAGE

- 1. FAILURE TO REPORT LOSS PROMPTLY:** Many policies require the business to promptly report a claim, even though the full losses cannot yet be measured. If the shutdown or reduction of your business is ongoing and you are still tabulating your lost revenues and profits, you should not delay assessing (and if necessary, filing) your claim for business interruption coverage under your policy. Our group can help you file a claim quickly to preserve your rights under the policy.
- 2. EXCLUSIONS FOR MICROBES, VIRUSES, AND/OR PANDEMICS:** Denials may be because the policy excludes coverage for viruses or pandemic events such as these. COVID-19 is not the first pandemic to impact businesses. Since the Severe Acute Respiratory Syndrome (“SARS”) epidemic of 2002-2003, many business interruption insurance policies have excluded coverage for bacteria, microbes, or viruses. Many of those exclusions may not be enforceable, however, for the current situation, depending on the language used in the policy.
- 3. LACK OF “PHYSICAL DAMAGE” TO THE BUSINESS PREMISES:** Insurers may also deny the claim due to a lack of “physical damage” to the physical premises of your business. This may be one of the most contested provisions in the coming months and years. Courts will be called upon to answer whether the premises of a business can be damaged by a virus when you, an employee, or a customer is diagnosed with COVID-19, and may have been in contact with the premises. Because the COVID-19 virus spreads via the air, courts will also have to consider whether confirmed cases in your city or municipality might also qualify as “physical damage.”
- 4. LACK OF A MANDATORY STAY-AT-HOME ORDER:** While much of the country is under stay-at-home orders, some states are not, and other orders are voluntary. Even if there is an active, mandatory stay-at-home order in your state, your business may qualify for an “essential services” exception. Most business interruption policies place a responsibility on the business owner to mitigate any damages that occur, and an insurer may use these provisions to try and deny claims for coverage under the provisions of the insurance policy.



ADDITIONAL CONSIDERATIONS

Insurance policies are governed by state law. Any analysis of your insurance policy must take account of the specific law in the state whose law applies to your policy, which may or may not be the law of the state in which your business is located. Our group of national law firms is experienced in pursuing claims in every state, and will be able to evaluate your case regardless of the applicable law.

Both insurance carriers and businesses, often through trade groups, have already reached out to government to provide assistance relating to business interruption coverage. At least six states, including Louisiana, Massachusetts, New Jersey, New York, Pennsylvania, and South Carolina, have already begun contemplating new legislation that would ensure coverage for business interruption losses regardless of the explicit terms of the policy. The proposed legislation differs in each state. Some proposals include limitations so that only

businesses with less than 150 employees are eligible, cannot have laid off any employees, or remain open for business in some capacity. Other proposals depend on a government-run fund to cover losses over a certain amount from contributions from all insurers authorized to issue policies in that state. Our group will be monitoring the development of these proposed laws to see how they affect the potential claims of our clients.

Businesses purchased business interruption insurance to cover emergencies. As this pandemic continues, Berger Montague, Greg Coleman Law, and Whitfield Bryson LLP are here to help business owners navigate the uncertain waters of business interruption claims. We will review and litigate claims on a fully contingent basis (no fee unless recovery obtained) and help our clients receive the monies to which they are entitled.

LEADERSHIP TEAM

THE COMMERCIAL LITIGATION POWERHOUSES OF BERGER MONTAGUE PC, WHITFIELD BRYSON LLP, AND GREG COLEMAN LAW PC HAVE FORMED A TEAM TO HELP YOU DETERMINE WHETHER YOUR BUSINESS INSURANCE COVERS THE LOSSES THAT YOUR BUSINESS IS FACING IN THE WAKE OF THE CURRENT PANDEMIC. ON A CONTINGENCY BASIS (NO FEE UNLESS RECOVERY OBTAINED), WE CAN HELP YOU DETERMINE YOUR COVERAGE, FILE A CLAIM WITH YOUR INSURANCE COMPANY, AND PURSUE A LAWSUIT ON YOUR BEHALF IF THE INSURANCE COMPANY WRONGFULLY DENIES YOUR CLAIM.



SHANON J. CARSON
Berger Montague PC

Shanon J. Carson is a principal and Managing Shareholder of Berger Montague, a national commercial litigation law firm headquartered in Philadelphia with offices in Minneapolis, San Diego, and Washington, DC. Berger Montague has approximately 70 attorneys and a large support team, and litigates complex civil cases in federal and state courts throughout the United States. The firm is known for its roles in serving private and governmental clients in high stakes litigation, including within the field of insurance. Now in its 50th year of operation, Berger Montague has recovered over \$30 billion for its clients and those it has represented.

Known for being able to lead teams and accomplish results, Mr. Carson is regularly appointed by courts to serve in lead counsel roles and is frequently asked to speak at CLEs and other engagements. Mr. Carson has achieved the highest peer-review rating, “AV,” in Martindale-Hubbell, and has received honors and awards from numerous publications. In 2009, Mr. Carson was selected as one of 30 “Lawyers on the Fast Track” in Pennsylvania, and in each year since 2015, has been selected as one of the top 100 lawyers in Pennsylvania as reported by Thomson Reuters. In 2018, Mr. Carson was named to the Philadelphia Business Journal’s “2018 Best of the Bar: Philadelphia’s Top Lawyers.” Mr. Carson currently serves on the Board of Directors of the Philadelphia Trial Lawyers Association and as a Co-Chair of its Class Action/Mass Tort Committee. Mr. Carson is also a member of the American Association for Justice and other professional organizations.

A graduate of the Dickinson School of Law of the Pennsylvania State University, Mr. Carson was a senior editor of the Dickinson Law Review and clerked for a U.S. District Court Judge in the Middle District of Pennsylvania while attending law school. Mr. Carson is now on the Board of Trustees of the Dickinson School of Law of the Pennsylvania State University. To learn more about Shanon and Berger Montague PC, please visit www.bergermontague.com.



DANIEL K. BRYSON
Whitfield Bryson LLP

Daniel Bryson is a founding partner of Whitfield Bryson, LLP and one of the nation's most respected and experienced attorneys in the country in the area of business representation, insurance related issues, and complex civil litigation matters on behalf of individuals and business entities. For over 32 years, Dan has handled hundreds of insurance related disputes on behalf of policy holders, including first party bad faith insurance cases, and business interruption cases. Dan has written and taught numerous continuing legal education courses on a variety of insurance related topics, including commercial general liability policies among others.

Dan and members of his firm are well equipped and dedicated to handling business interruption cases on behalf of those who have had improperly denied claims. Dan is a frequent lecturer and writer on a variety of complex litigation issues. He has been quoted by a variety of media outlets over the years including the Wall Street Journal, Washington Post, New York Times, Law360 and Lawyers Weekly to name a few. He has been named as a member of the Legal Elite and Super Lawyers in North Carolina on numerous occasions. He has been awarded the designation of one of the Top 25 lawyers in Raleigh by Charlotte Magazine for a number of years, including 2020.

Dan is on the Executive Board and Vice-President of the Public Justice Foundation Board. Public Justice is a nationwide public interest law firm (see www.publicjustice.net for more information about this great organization). Dan is also an adjunct professor at Campbell Law School in Raleigh, NC, where he teaches classes on complex litigation and multi-district litigation.

Dan received his JD cum laude from Wake Forest University in 1988, his MBA from the University of North Carolina in 1986, and BA from the University of North Carolina Chapel Hill in 1983. To learn more about Dan and Whitfield Bryson LLP, please visit www.whitfieldbryson.com.



GREG COLEMAN
Greg Coleman Law, PC

Greg is the founder and managing partner of Greg Coleman Law PC. With over 30 years of trial and litigation experience, Greg's nationwide practice focuses on complex civil litigation including insurance related matters and those arising from contract disputes. Before he represented plaintiffs, Greg spent over 15 years representing insurance carriers, including State Farm, Allstate, and Progressive. He also served as conflicts counsel for Nationwide. He wrote coverage opinion letters and tried numerous coverage cases on behalf of insurers and their insureds, including first-party claims. On behalf of plaintiffs, Greg has tried more than 100 jury trials on behalf of both Plaintiffs and Defendants.

Greg lectures and authors published materials on advanced trial advocacy, tactics, and strategy, as well as on complex litigation matters. He is certified by the National Board of Trial Advocacy as a Civil Trial Advocacy Specialist and a Civil Pretrial Advocacy Specialist, has been named Knoxville Lawyer of the Year on multiple occasions, is listed in The Best Lawyers in America, is a Mid-South Super Lawyer, has been named one of the Top 100 Trial Lawyers by the American Trial Lawyers Association, and named one of the best lawyers and law firms in the country by U.S. News and World Report. Greg is also a lifetime member of the prestigious Multi-Million Dollar Advocates Forum. More importantly, Greg has been recognized by his peers and colleagues, who nominated him to the Martindale-Hubbell Bar Register of Preeminent Lawyers, which includes only those select law practices that have earned the highest rating in the Martindale-Hubbell Law Directory.

When not busy litigating on behalf of consumers, Greg is heavily involved with a variety of civil and charitable activities.

Greg earned his Juris Doctor from the University of Tennessee College of Law in 1989, and his B.A. with highest honors and distinction from Jacksonville State University in 1986. To learn more about Greg and Greg Coleman Law PC, please visit www.gregcolemanlaw.com

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