

11 June 2021

Re: Business insurance claim template

CSASPP v. HMTQ et al., BCSC, Reg No. S-210831

Dear Small Business Owner,

As tens of thousands of you are already aware, our organization has been advocating for you since we initiated a class action constitutional challenge on 26 January, 2021. This was done on behalf of all persons affected by COVID-19 related government measures.

If you are reading this, you may be a putative class member. We will notify you if the action is certified and the exact class definition approved by the court so you can determine whether you fit within the class.

Litigation is rarely expeditious, despite our best efforts. But when legal systems are designed by an anachronistic industry that has no economic incentive towards efficiency, this is unfortunately inevitable.

If we prevail at trial we will have obtained a long term solution. But this does nothing to alleviate the catastrophic economic harm faced by tens of thousands of businesses across our province *now* as a result of COVID-19 related government measures. Statistics Canada reports that British Columbia experienced 17,350 business closures in April of 2020; a more than two-hundred percent increase from 7,623 in 2019; 6,719 in 2018, and 6,834 in 2017.

We have listened carefully to our stakeholders like you and understand that you need additional short term tools to augment those we continue to produce. What you need more than anything right now is money to address your cash flow challenges.

To that end you will find enclosed a template we have prepared to help you initiate your process of obtaining relief from your business insurance policy. You can download an editable copy from our website at covidconstitutionalchallengebc.ca. This document must be modified with respect to *your* specific insurance policy. We have annotated it where necessary so that you can remove or modify those paragraphs as they relate to your circumstance.

Nothing in this cover letter or template constitutes legal advice and may only be used at your own risk. CSASPP assumes no liability and is not obligated to provide additional assistance. If you do not know how to make a claim of loss to your insurer, consult your insurance broker and a lawyer - but be cognizant of potential conflicts from the insurer.

We understand that you are not all in the same boat. Some continue to operate, but no longer with a liquor license. Others never had one to begin with, but have been deprived of their business license. Others never had the latter rescinded by regulators, but suffer ongoing losses as a result of restrictions applied to a general category of business such as a limit on the number of patrons. While yet others have been threatened by regulators, but wait with no certainty and much anxiety for the axe to fall and ruin a lifetime's worth of labour.

Start by locating your business insurance policy your insurer provided you. It may have come from Lloyds, Wawanesa, Intact, or another. Somewhere in that documentation there will be an address to which you should submit your claim. Make the necessary insertions or revisions.

Please note that each insurance policy has its own unique requirements and specific notice provisions that you must strictly comply with. A loss must be reported in writing as soon as possible or within a prescribed period. Check your insurance policy regarding when and how notice must be provided. Failure to notify your insurer in accordance with the policy terms may vitiate coverage - but ultimately a judge has final say on that, and not your insurer.

It is important to set an expectation that you will be given the runaround by your insurer. They will respond in a matter of fact tone that you have no applicable coverage. This is standard. They have been doing this for centuries.

They've also been losing in court for centuries.

To mitigate the likelihood of your insurer dispensing with the usual perfunctory obstacles, our template addresses the most common scenarios we anticipate. These include insurers claiming:

- I. There is an exclusion clause that denies coverage;
- II. A coercive threat or action by a civil authority cannot trigger a duty to defend;

III. A government mandated shutdown does not constitute a physical loss of property;

IV. Because there is no duty to indemnify, there is therefore no duty to defend.

A *duty to indemnify* means the insurer has to make you whole for a type of loss. A *duty to defend* means the insurer has to pay for the cost of a lawyer to defend you from being sued.

But sometimes a duty to defend in some jurisdictions can be triggered without being sued, or without even being threatened with a suit. The insured could simply be the target of a coercive civil authority that deprived or restricted the insured's business activities in some manner, such as taking away a license to do something.

Where there is ambiguity in the duty to defend, there is a general presumption in favour of the insured. Your insurer will not inform you of that.

Further, even where there is no duty to indemnify, that does not necessarily mean the insurer has no duty to defend. The duty to defend is broader than the duty to indemnify. The former can still exist even when the latter does not. They will not tell you that either, but this is something of which to be aware and something we have cited in the case law to let your insurer know that *you* know.

But even after you have overcome these obstacles and the insurer reluctantly agrees to pay for your lawyer to defend against the threats or actions of a coercive civil authority, assuming that is one of the challenges you are confronted with, the insurers partner with various law firms that bill them at a reduced rate. These law firms are provided with a volume of regular work, or billable hours, something sacred in law.

We have preemptively addressed this in the template by reminding the insurer the case law requires that the insurer permit you to select a lawyer of your own choosing where there is a coverage dispute.

Insurers have played a prominent, albeit somewhat not well known, role for centuries in shaping global commerce. Money influences conduct and judgment. An insurer is driven by the profit motive, like any other business.

A wise business owner does not obtain a policy because they expect to be made whole with ease on a good faith claim. They know they will not. They pay the premiums to rent a future defendant with sufficient assets to make them whole at a later date, even if it may require pulling teeth in court. This is why Lloyds has already paid out billions of dollars as a result of COVID-19 related measures, despite insurers being less than enthusiastic to disclose that to you.

Lastly, to ensure that we continue to dynamically adapt to our community's needs, we endeavour to track performance metrics whenever practical. If you obtain any form of relief

from your insurer, we ask that you please contact reception at (604) 256-3060 to let us know as soon as possible.

Yours truly,

A handwritten signature in black ink, appearing to read 'Kip Warner', with a long horizontal stroke extending to the left.

Kip Warner, Executive Director
Canadian Society for the Advancement of Science in Public Policy (CSASPP)

KCSW/kcsw

encl:

- CSASPP's Notice of Loss template.