



COVID-19: INSURANCE COVERAGE POSITION STATEMENT

Dear Member,

We continue to work collaboratively with our various stakeholders and partners including your Association to keep you informed during this evolving and unprecedented time.

This letter addresses specific aspects of policies purchased by CAO members, including Business Interruption, Commercial General Liability and Professional Liability.

We are monitoring the ongoing government assistance with respect to small businesses and we are distributing risk management material that will be shared through your Association. Below, we have included links to key articles which you may find to be of further assistance. Please also continue to monitor your Association's and provincial College's website for pertinent information.

The contents of this letter are for informational purposes only and do not amount to insurance or legal advice in relation to any particular claim. Our intention is to provide you with an overview of the available coverage based on our review of the policy terms and conditions. The COVID-19 Pandemic is an unprecedented situation and insurance coverage is fact dependant. As the broker, BMS Canada Risk Services Ltd. does not adjudicate claims. Each claim is considered on its own unique facts by the Insurer. Please continue to report all potential or actual claims.

Business Package

If you have purchased a Business/Clinic Package policy through the CAO Insurance Program, this section applies to you. This product provides coverage for Property and/or Contents, Crime, Business Interruption and Commercial General Liability. The Insurer for this policy and the Business Commercial General Liability is Aviva.

Business Interruption

Business Interruption insurance is generally intended to cover losses from interruptions to a company's operations. Coverage is triggered if there is direct physical loss or damage to the insured premises that is caused by an insured peril (e.g. Fire). The scope of this coverage is common in the insurance industry.

Upon review of the policy, there may be coverage for actual loss of business income caused by the interruption of business when access is restricted to the insured property, in whole or in part, by an order of a civil authority resulting from an outbreak of a contagious or infectious disease that is required by law to be reported to government authorities.

However a successful claim under this policy wording is dependent upon several conditions being satisfied all of which would be fact specific. Each claim will be assessed and interpreted on its own merits through the claims process. Should this coverage be afforded, it is restricted to actual loss sustained for a period of up to 30 days.

The policy also includes Negative Publicity Coverage to cover actual loss of business income sustained as a direct result of, among other things, an outbreak of a contagious or infectious disease within 25 kilometres of the insured premises and that is required to be reported to government authorities. Should this coverage be afforded, it is also restricted to actual loss sustained for a period of up to 30 days. However, given the widespread nature of COVID-19 it is unknown how the insurer will adjudicate coverage in these cases.

Commercial General Liability

Your Commercial General Liability (CGL) coverage is designed to protect against third party “bodily injury” and “property damage” claims. The definition of “bodily injury” includes disease, and could in limited circumstances trigger coverage in relation to COVID-19.

Insurers note that in order for the CGL to respond in present circumstances, there would have to be allegations of bodily injury, property damage or personal injury claimed by a third party arising from your handling of the COVID-19 pandemic. Additionally, the insured would need to be negligent and the loss must occur during the policy period and in the Coverage Territory (Canada).

Pollution is a common exclusion across CGL policies. It is anticipated that this exclusion will be contested and applied to limit opportunities for coverage in relation to COVID-19.

Professional Liability

Professional Liability insurance (PLI) protects you against liability or allegations of liability for injury or damages that have resulted from a negligent act, error, omission, or malpractice that has arisen out of your professional capacity as an optometrist or if a complaint is made against you to your College. PLI protects optometrists by ensuring that your legal defence is coordinated and paid for if a claim is made against you. Your PLI also covers the cost of patient compensation, or damages.

A Claim means any demand upon the Insured for damages or services alleging liability of the Insured as the result of any “injury”, act, error or omission. “Injury” means bodily injury, sickness, or disease.

Upon review of the CAO PLI Wording, there are no specific exclusions relating to transmission of a virus or disease from the insured during delivery of their professional services, except for circumstances involving alleged or actual abuse. However negligence on behalf of the Insured must be proven for a claim to be successful. There is also standard exclusions relating to claims arising out of, or attributable to any dishonest, fraudulent or criminal act by an insured.

Tele-optometry

The CAO PLI policy has no additional restrictions for Optometrists delivering their professional services via tele-optometry, as long as the insured is acting within their scope of practice and licenced jurisdiction. All standard policy conditions apply. There are additional considerations for professionals utilizing technology. Please refer to the Virtual Health Care Services – Ensuring Continuity of Care article linked on the next page.

If you are transitioning your practice to tele-optometry it’s recommended that you consider Cyber Security & Privacy Liability coverage. More information can be found at www.cao.bmsgroup.com or by contacting BMS.

Claims Reporting

Every claim is unique and will be assessed on its own merit by the Insurer. Please continue to report all potential or actual claims. The content of this letter is for informational purposes only and does not constitute insurance or legal advice in relation to any particular claim.

Claims Reporting details can be found on your individual Certificate of Insurance as well as at www.cao.bmsgroup.com.

If you have any questions, or to obtain a copy of the policy wording(s), please contact BMS at cao.insurance@bmsgroup.com.

Insurers for CAO Insurance Program Policies:

Business/Clinic Package: Aviva Canada

Business Commercial General Liability: Aviva Canada

Individual Commercial General Liability: Novex (Intact Insurance Company)

Professional Liability: Novex (Intact Insurance Company)

Additional Resources

[Virtual Health Care Services – Ensuring Continuity of Care](#)

[First Response – The Law Governing States of Emergency in Canada](#)

[Most Businesses not covered for Potential Interruptions from Coronavirus, insurance industry warns - *Globe and Mail*](#)

[Coronavirus and small business: keeping you and your employees safe - *CFIB*](#)

[COVID-19 | Pandemic Preparedness for Business - *Canadian Chamber of Commerce*](#)

[Coronavirus disease \(COVID-19\): Resources for Canadian businesses – *Government of Canada*](#)

We are committed to monitoring developments as the COVID-19 pandemic evolves and we will continue to provide updates, including from insurers as they become available. We will also share additional resources with you.

Thank you for your continued participation in the CAO Liability Insurance Program.

Brian Gomes

President & CEO, BMS Canada Risk Services Ltd.

Disclaimer: this document was made available on March 19, 2020 as a response to the COVID-19 outbreak in Canada. The circumstances surrounding COVID-19 continue to change rapidly and BMS Canada Risk Services Ltd. (BMS Group) wanted to provide members access to information relating to Liability Insurance Coverages that they may have purchased through their respective Professional Association Program. As the environment and realities related to COVID-19 are still in their infancy and continue to change rapidly, this information is provided merely as a guide and must be interpreted reflecting on when the information was delivered recognizing that the expert advice may change as the situation develops.

Appendix

Attached to this document is part of the Policy Wording that relates to Business Interruption.

Please contact BMS at cao.insurance@bmsgroup.com to obtain a full copy of the policy.

I. INDEMNITY AGREEMENT

The Insurer will indemnify the Insured for the actual loss of "business income" sustained by the Insured directly resulting from the necessary interruption of the "business" caused by "damage" occurring during the policy period.

II. MEASURE OF RECOVERY

A. COVERAGE

Recovery under this form is limited to the actual loss of "business income" sustained by the Insured during the "indemnity period" due to:

1. Reduction of "revenue", being the amount obtained by multiplying the "revenue shortfall" by the "business income percentage"; and
2. Extra expense, being the necessary additional cost to conduct the "business" over and above the cost that normally would have been incurred during the same period had no "damage" occurred. This additional cost will include:
 - a. the expense of obtaining and using other property or facilities of other concerns or other similar necessary emergency expenses;
 - b. the expense of obtaining property for temporary use that is necessarily required for the conduct of the Insured's "business".
3. The increase in actual loss of "business income" resulting from the enforcement of any by-law, regulation, ordinance or law which:
 - a. regulates zoning or the demolition, repair or construction of damaged buildings or structures; and
 - b. is in force at the time of "damage".

less the amount of those expenses that do not necessarily continue during the "indemnity period". Any of the Insured's ordinary "business" expenses, including "ordinary payroll expenses" will be considered necessary if:

- a. such expenses would have been covered by the Insured's "business income" before the loss, and
- b. such expenses are required so that the Insured's "business" can return to operations with the same quality of service as before the loss.

B. EXCLUSIONS

1. In addition to the terms, conditions, exclusions and limitations of the property insurance form that insures "building(s)", "equipment" or "stock" belonging to:

- a. the Insured;
- b. others for which the Insured is obligated to insure or for which the Insured is legally liable, the Insurer is not liable for any loss of "business income" or extra expense:

i. Idle period

For any time during which "business" would not or could not have been carried on if "damage" had not occurred.

ii. Fines and damages

Due to fines or damages for:

- (a) breach of contract;
- (b) late or non completed orders; or
- (c) penalties of any kind;

except as provided in III. SUPPLEMENTARY COVERAGES.

iii. Cancellation of contract

Due to the suspension, lapse or cancellation of a contract following "damage" extending beyond the time "business" could have resumed if the contract had not lapsed, been suspended or cancelled..

iv. By-laws and zoning

Resulting from the enforcement of any by-law, regulation, ordinance or law that:

- (a) could have been enforced in the absence of "damage" at the "premises"; or
- (b) prohibits the Insured from rebuilding or repairing on the same site or on an adjacent site or prohibits continuance of like occupancy.

2. Terrorism

The Insurer is not liable for loss of "business income" or extra expense incurred resulting from loss or damage caused directly or indirectly, in whole or in part, by "terrorism" or by any activity or decision of a government agency or other entity to prevent, respond to or terminate "terrorism". This exclusion applies whether or not there are one or more other causes or events (whether covered or not) that contribute concurrently or in any sequence to the occasioning of the loss or damage.

If any portion of this exclusion is found to be invalid, unenforceable or contrary to statute, the remainder will remain in full force and effect.

III. SUPPLEMENTARY COVERAGES

A. GROUP ONE

The limit of insurance applicable to loss, costs or expenses covered by any or all coverages described in GROUP ONE is the blanket limit shown on the "Policy Declarations". The blanket limit of insurance is in addition to amounts payable under II. MEASURE OF RECOVERY.

1. ACCOUNTANTS' FEES

This form insures the reasonable charges payable by the Insured to their professional accountants for producing particulars or details or other proofs, information or evidence as may be required by the Insurer for the purpose of investigating or verifying any claim under this form and reporting that such particulars or details are in accordance with the Insured's accounting records. There is no coverage for fees incurred for accounting services that are required in the normal course of the Insured's "business".

2. FINES AND PENALTIES

This form insures the Insured's legal liability for fines, damages or penalties due to breach of contract for late or non-completion of orders, if such breach of contract is a consequence of "damage" at the "premises".

3. LEASEHOLD INTEREST

- a. This form insures additional leasing costs incurred by the Insured if, as a result of "damage", the landlord terminates the "premises" lease in accordance with the conditions of that lease.
- b. Recovery is limited to the difference between current leasing costs at the "premises" and higher leasing costs at another location that are actually incurred by the Insured. There is no coverage for additional leasing costs that result from the Insured exercising an option to cancel a "premises" lease.

4. NEWLY ACQUIRED LOCATIONS

- a. This form insures the actual loss of "business income" sustained by the Insured during the "indemnity period" resulting from the necessary interruption of Insured's business activities occurring at any location that is:
 - i. acquired by the Insured after the beginning of the current policy period,
 - ii. owned, leased, occupied or controlled by the Insured, and
 - iii. within the "territorial limits",if the interruption is caused by "damage" at such newly acquired location.
- b. This coverage will cease on the earliest of:
 - i. 90 days from the date of acquisition of such location;
 - ii. the date such location is reported to the Insurer; or
 - iii. the expiration date of this policy.
- c. Premium for this coverage is payable from the date of the acquisition of such newly acquired location.

B. GROUP TWO

Coverages listed in **GROUP TWO** are subject to the limit of insurance shown on the "Policy Declarations" for the particular coverage described. The limit of insurance for each coverage in **GROUP TWO** is in addition to any other limit of insurance applicable under this form.

1. CONTINGENT BUSINESS INTERRUPTION

This form insures the actual loss of "business income" sustained by the Insured during the "indemnity period" resulting from the necessary interruption of the "business" occurring at the "premises" if the interruption is caused by direct physical loss or damage, directly caused by an insured peril, to property, except of the type that is Excluded Property, of a "contributing business" located within the "territorial limits" during the policy period. Loss or damage to property of a "contributing business" will be deemed to be loss resulting from "damage" at the "premises".

2. UTILITIES SERVICE INTERRUPTION

This form insures the actual loss of "business income" sustained by the Insured during the "indemnity period" as a result of damage to or destruction of "utility property" located within the number of kilometres as shown on the "Policy Declarations" from the "premises", provided such damage or destruction is caused directly by an insured peril. There is no coverage for loss of "business income" due to:

- a. the interruption of "utility services" for a duration of less than 24 consecutive hours;
- b. damage to or destruction of above ground electrical and telephone transmission lines or distribution lines or their supporting structures located away from the "premises";
- c. an intermittent signal;
- d. lack of sufficient capacity; or
- e. an intentional reduction in supply.

C. GROUP THREE

Coverages listed in **GROUP THREE** are subject to time or distance limitations.

1. MORTGAGE RATE GUARANTEE

- a. This form insures additional mortgage costs incurred by the Insured if, as the result of "damage" to an insured "building", the Insured is required to close an existing mortgage, requiring a new mortgage at a higher interest rate.
- b. Monthly payments will be made for the difference in cost of the outstanding mortgage balance, between the current mortgage rate on the date of the loss and the new higher mortgage rate.
- c. Coverage ceases at the earliest of:
 - i. expiry of the mortgage term that was in force at the time of loss;
 - ii. the termination of the Insured's interest; or
 - iii. 60 months from the date of loss.

2. NEGATIVE PUBLICITY COVERAGE

- a. This form is extended to insure the actual loss of "business income" sustained by the Insured as a direct result of any of the following occurrences:
 - i. poisoning of any person directly caused by the consumption of food or drink provided by the Insured at the "premises";
 - ii. an outbreak of a contagious or infectious disease within 25 kilometres of the "premises" that is required by law to be reported to government authorities;
 - iii. violent acts occurring at the "premises" such as murder, suicide, sexual assault, aggravated assault or robbery;
 - iv. an illegal discharge of a firearm at the "premises"; or
 - v. an escape or release of any substance or odour produced by or originating from air quality or water control equipment that causes bodily injury or sickness.
- b. For the purpose of this coverage only, occurrences listed in a. i. through v. will be deemed loss resulting from "damage".
- c. This coverage is limited to the time period shown on the "Policy Declarations".

3. ORDINARY PAYROLL EXPENSES

At the option of the Insured, the Insurer will be liable for "ordinary payroll expenses" incurred by the Insured which must necessarily continue after "damage". Coverage is limited to the shorter of:

- a. the time period shown on the "Policy Declarations"; or

b. the "indemnity period".

4. RESTRICTED ACCESS

- a. This form insures the actual loss of "business income" sustained by the Insured caused by the interruption of the "business" at the "premises" when ingress to or egress from the "premises" is restricted in whole or in part:
- i. by direct physical loss or damage to any property in the vicinity of the "premises" and such loss or damage is directly caused by an insured peril;
 - ii. (a) by order of civil authority resulting from any of the following occurrences:
 - (1) food or drink poisoning;
 - (2) an outbreak of a contagious or infectious disease that is required by law to be reported to government authorities;
 - (3) defective sanitation or drains; or
 - (4) murder or suicide.(b) There is no coverage for loss of "business income" during the first 24 consecutive hours of such interruption by order of civil authority.
- b. This coverage does not apply to loss of "business income" due directly or indirectly to any interruption of "utility services".
- c. This coverage is limited to the time period shown on the "Policy Declarations".

IV. SPECIAL CONDITIONS

1. ALTERNATE TRADING

If, during the "indemnity period", goods are sold or services are rendered for the benefit of the "business" elsewhere than at the "premises" by or on behalf of the Insured, the money paid or payable in respect of such sales or service will be brought into account in arriving at the "revenue" during the "indemnity period".

2. MULTIPLE LOCATIONS OR DIVISIONS

If the Insured operates multiple locations or divisions that contribute to the "revenue" of the "business", calculation of "revenue shortfall" will be based on the operations of the "business" as a whole and not strictly on the "revenue shortfall" of the location or division that sustains "damage".

3. OBLIGATION TO MINIMIZE LOSS

In the event of "damage" in consequence of which a claim is or may be made under this form, the Insured will cooperate with the Insurer to do all things that are reasonably practicable to minimize interruption of or interference with the "business" in order to avoid or diminish the loss payable.

4. PROPERTY DAMAGE PROVISION

It is a condition precedent to any payment under II. Measure of Recovery that, at the time of the occurrence of the "damage", there is in force commercial property insurance covering the interest of the Insured in the property at the "premises" against such "damage".

5. WAITING PERIOD

If a waiting period is shown on the "Policy Declarations", the "indemnity period" will not begin until the end of such specified waiting period.

V. DEFINITIONS

Whenever used in this form and its conditions and endorsements attached to this policy:

1. "business" means the operations of the Insured as shown on the "Policy Declarations".
2. "business income" means the amount by which:
 - a. the sum of:
 - i. the "revenue", plus
 - ii. the amounts of closing stock and work in progress exceeds
 - b. the sum of:
 - i. the amounts of opening stock and work in progress, plus
 - ii. the amount of the "variable operating expenses".
3. "business income percentage" means the percentage obtained by dividing the "business income" by the "revenue" generated in the financial year immediately prior to the date of the "damage". Adjustments will be made:
 - a. as may be necessary to provide for the trend of the "business"; and
 - b. for variations in the "business" or other circumstances which would have affected the "business income" had the "damage" not occurred, so that the adjusted figures will represent, as nearly as reasonably practicable, the results which, but for the "damage", would have been obtained during the comparable period after the "damage".
4. "contributing business" is an enterprise which is not owned, rented or controlled in whole or in part by the Insured, and:
 - a. provides products, materials or services to the Insured or anyone else on the Insured's behalf;
 - b. receives products, materials or services that the Insured produces or sells; or
 - c. is in the vicinity of the "premises" and which attracts "revenue"."Contributing business" does not mean an enterprise that, directly or indirectly, provides to or receives from the Insured "utility services".
5. "damage" means the direct physical loss of or damage to property at the "premises" from an insured peril.
6. "expected revenue" means the "revenue" in the financial year immediately prior to the date of the "damage" during the period that corresponds with the "indemnity period". This "revenue" will be adjusted to represent as closely as possible the results which, but for the "damage", would have been obtained during the comparable period after the "damage". Adjustments will be made:
 - a. as may be necessary to provide for the trend of the "business"; and
 - b. for variations in the "business" or other circumstances which would have affected the "business income" had the "damage" not

occurred, so that the adjusted figures will represent, as nearly as reasonably practicable, the results which, but for the "damage", would have been obtained during the comparable period after the "damage".

7. "indemnity period" means the period beginning with the occurrence of the "damage" and ending not later than the number of months shown on the "Policy Declarations", during which the results of the "business" will be affected in consequence of the "damage".
8. "ordinary payroll expenses" means the entire payroll expense for all employees of the Insured, other than:
 - a. officers, executives, department managers;
 - b. employees under contract; and
 - c. other important employees whose services would not be dispensed with in the event of "damage".
9. "revenue" means the money paid or payable to the Insured for:
 - a. goods sold and delivered and for services rendered in course of the "business" after allowing for returns and discounts; and
 - b. gross rental income for real estate leased or rented to others.
10. "revenue shortfall" means the amount by which the "revenue" during the "indemnity period" falls short of "expected revenue".
11. "utility property" means communication equipment, satellite receivers, generating plants, transformer stations, switching stations, substations, transformers, pumping stations, sewerage or other apparatus that supply "utility services" to the "premises".
12. "utility services" means communications, electricity, gas, refrigeration, steam, water or outgoing sewerage service delivered to the "premises" through the use of "utility property".
13. "variable operating expenses" means:
 - a. all purchases (less discounts received);
 - b. packing materials;
 - c. delivery and freight (other than by own vehicles); and
 - d. any item shown on the "Policy Declarations" as Additional Variable Operating Expenses.