

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 CPA members, including Business Interruption, Commercial General Liability and Professional Liability.

We are monitoring 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 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 CPA 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 Commercial General Liability is Novex (Intact Insurance Company).

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.

In addition to the requirement for direct physical loss or damage, Intact has advised that, at present, "virus" or "disease" is not a named peril. Consequently coverage may not respond in relation to COVID-19. The Extra Expense Coverage under the policy also excludes loss of income under any circumstance.

The policy is extended to cover loss of business income during the period of time, not exceeding 30 days, while access to the insured premises is prohibited by order of civil authority, but only when such order is given as a direct result of direct physical loss of or damage to neighbouring premises by an insured peril.

Typically, business Interruption insurance only covers quantifiable physical losses. For example, replacing inventory or repairing property. Absent these particular circumstances, it is not likely coverage would be triggered in the COVID-19 scenario we now face.

Insurance coverage limitations relating to virus or disease have been in place for some time in the business interruption context. Additional restrictions and complete exclusions were incorporated in business interruption policies after the 2002-2004 Severe Acute Respiratory Syndrome ("SARS") outbreak.

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 a physiotherapist or if a complaint is made against you to your College. PLI protects physiotherapists 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" includes bodily injury, sickness, or disease.

Upon review of the CPA PLI Wording, there are no specific exclusions relating to transmission of a virus or disease from the insured during delivery of their professional services that have been identified. 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.

Telehealth

The CPA PLI policy has no additional restrictions for physiotherapists delivering their professional services via telehealth, as long as the insured is acting within their scope of practice and licenced jurisdiction. 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 telehealth it's recommended that you consider Cyber Security & Privacy Liability coverage. More information can be found at www.cpa.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.cpa.bmsgroup.com. If you have any questions, or to obtain a copy of the policy wording(s), please contact BMS at cpa.insurance@bmsgroup.com.

Insurers for CPA Insurance Program Policies:

Business/Clinic Package: Novex (Intact Insurance Company)

Commercial General Liability: Novex (Intact Insurance Company)

Professional Liability: QBE (Lloyd's)

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 CPA 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 cpa.insurance@bmsgroup.com to obtain a full copy of the policy.

SUMMARY OF COVERAGES

Item	Extensions of Coverage	Amount of Insurance per occurrence (\$)
1.	Contingent Loss of Income – Contributing/Recipient Property	100,000
2.	Contingent Loss of Income – Neighbouring premises	50,000 or 90 days (highest amount)
3.	Extra Expenses	100,000
4.	Fines, Damages or penalties for Breach of Contract	50,000
5.	Interruption by Civil Authority	30 days
6.	Mortgage Rate Guarantee	100,000
7.	Newly Acquired Property	90 days
8.	Off–Premises Service Interruption	100,000
9.	Ordinary Payroll	90 days
10.	Product Research & Development Business Income Extension	50,000
11.	Professional Fees	25,000
12.	Tenant’s Leasehold Interest – Rents	50,000

The Coverages and Limits of Insurance shown under the Summary of Coverages in this Form only apply if a Business Interruption Insurance Form is attached to this policy.

Certain words and phrases in bold font have special meaning as defined in the DEFINITIONS Section contained in the Form to which this Form is attached.

The titles of sections or paragraphs listed below should not be considered for purposes of interpreting the intent of this Form; these titles have only been inserted for ease of reading.

In the event that coverage provided under any Extension in this Form is more specifically and separately insured elsewhere in this policy, then only the relevant Extension with the highest limit shall apply.

In addition, if the Limit of Insurance specified in the Summary of Coverages in this Form and the Limit of Insurance shown on the Declaration Page(s) are different, the highest limit will apply.

The following Extensions are subject to all terms, conditions, exclusions, stipulations and provisions applicable to the Business Interruption Insurance Form attached to this policy, unless stated otherwise.

1. Contingent Loss of Income – Contributing/Recipient Property

This Form is extended to cover loss of business income resulting from the necessary interruption of or interference with the business of the Insured caused by direct physical loss or direct physical damage by an insured peril occurring during the term of the policy to property situated:

- 1.1. at the premises of a recipient property, being property to which the Insured's products are being shipped, which wholly or partially prevents the acceptance of products produced or sold by the Insured; or
- 1.2. at the premises of a contributing property, being a supplier(s) of materials to the Insured, which wholly or partially prevents the delivery of materials to the Insured, excluding:
 - 1.2.1. public utility suppliers such as electricity or gas; or
 - 1.2.2. cable, satellite or other communications suppliers;
- 1.3. at the premises of the provider of internet access services to the Insured, which wholly prevents the transmission of data.

This Extension applies only to contributing/recipient properties situated in Canada or in the United States of America.

2. Contingent Loss of Income – Neighbouring premises

This Form is extended to cover loss of business income resulting from interruption of or interference with the business in consequence of direct physical loss or direct physical damage by an insured peril to property on the same premises, or in neighbouring premises to the Insured, that prevents or hinders the use of or access to the

premises or property of the Insured, whether the Insured's **premises** or property are damaged or not.

The amount payable under this Extension shall be the highest of the amount of insurance stated in the Summary of coverages or the amount of loss of income incurred for the number of days specified in this Summary of coverages.

3. **Extra Expenses**

This Form is extended to cover **extra expenses** necessarily incurred by the Insured during the **restoration period** to maintain, as much as possible, the **normal** activities of the business after an insured loss affecting the **buildings** or their **contents**.

This Extension includes the actual loss as insured by this Form during the period of time, not exceeding thirty (30) days, while access to the **premises** is prohibited by order of civil authority as a direct result of damage to neighbouring premises by an insured peril.

The following expenses are not covered under any circumstances:

- 3.1. loss of income;
- 3.2. extra expense in excess of that necessary to continue as nearly as practicable the **normal** conduct of the Insured's business;
- 3.3. cost of repairing or replacing damaged property, except cost in excess of the **normal** cost of such repairs or replacements necessarily incurred to reduce the total amount of **extra expenses**.

Extra expenses means the excess (if any) of the total cost during the **restoration period** for the purpose of continuing the Insured's business over and above the total cost that would normally have been incurred to conduct the business during the same period had no loss occurred. This will include the cost of using the property of others, or other similar and necessary emergency expenses. Any salvage value of such property remaining after resumption of **normal** operations shall be taken into consideration in the adjustment of an insured loss.

Normal means the condition which would have existed had no loss occurred.

Restoration period means the period of restoration, commencing with the date of the loss and not limited by the expiration date of this policy, as shall be required with the exercise of due diligence and dispatch to repair, rebuild or replace such part of the property as may be destroyed or damaged.

4. **Fines, Damages or penalties for Breach of Contract**

This Form is extended to cover such sums the Insured shall be legally liable to pay in discharge of fines, damages or penalties incurred solely for late or non-completion of orders in consequence of direct physical loss of or damage to insured property from an insured peril.

5. **Interruption by Civil Authority**

This Form is extended to cover loss of business income during the period of time, not exceeding 30 days, while access to the **premises** is prohibited by order of civil authority, but only when such order is given as a direct result of direct physical loss of or damage to neighbouring premises by an insured peril.

6. **Mortgage Rate Guarantee**

This Form is extended to cover the increase in mortgage cost required as a result of direct physical loss of or damage to a **building** by an insured peril where loss or damage to such **building** is deemed to be total, and where the mortgagor at the time of the loss closes the existing mortgage, requiring a new mortgage at a higher, competitive rate of interest.

The new mortgage must be the same term, amortization, and interest rate option of the previous mortgage.

Indemnity shall be based on the difference between the mortgage rate in effect on the date of the loss and the new mortgage rate, based on the outstanding mortgage balance.

This Extension will continue:

- 6.1. for the duration of the existing mortgage period in effect at the time of the loss, until its expiry; or
 - 6.2. until the Insured relinquishes title or interest in the **building**; or
 - 6.3. for a period not exceeding 60 months;
- whichever occurs first.

This coverage shall have full force and effect only if loss of or damage to the building is deemed to be total, and settlement of partial losses shall be made as if this Extension had not been in effect.

7. Newly Acquired Property

This Form is extended to cover loss of business income due to direct physical loss of or damage to any newly acquired **buildings** or **contents** by an insured peril, and that are owned, rented or controlled by the Insured, in Canada or the United States of America.

This coverage attaches at the time of the acquisition and extends:

- 7.1. for the number of days shown in the Summary of coverages; or
 - 7.2. to the date of endorsement to this policy adding such location; or
 - 7.3. until the expiry date of this policy;
- whichever occurs first.

8. Off-Premises Service Interruption

This Form is extended to cover loss of business income arising from the interruption of business resulting from the direct physical loss of or damage to **stock** on the **premises** caused by a change of temperature or dampness or dryness of atmosphere, provided that such loss or damage results directly from an insured peril to off-**premises** public utility generating plants, switching stations, substations, transformers and pumping stations, including underground transmission lines and pipes, that generate and supply electricity, water, gas or steam to the insured property.

Such damaged apparatus must be located within 100 kilometres of the location specified on the Declaration Page(s).

This coverage does not insure loss or damage arising from loss of or damage to overhead electrical transmission or distribution lines (or their supporting structures) that are off the **premises**.

This Extension of coverage shall apply only if the off-**premises** service interruption exceeds 24 consecutive hours. The Insured shall then be eligible to indemnity from the beginning of the service interruption.

9. Ordinary Payroll

This Form is extended to cover, unless specifically excluded or insured by separate endorsement to this policy, the Insured's entire ordinary payroll expense for a period of time not in excess of 90 consecutive days immediately following the date of the direct physical loss or damage, which may continue during a total or partial suspension of business. This Extension covers only to the extent necessary to resume the normal business of the Insured with the same quality of service which existed immediately preceding the destruction or damage by insured perils and which would have been earned had no such destruction or damage occurred.

Ordinary payroll expense means the entire payroll expense for all employees of the Insured, except officers, executives, department managers, employees under contract and other important employees whose services would to be dispensed with should the business be interfered with or interrupted.

10. Product Research & Development Business Income Extension

This Form is extended to cover loss of business income arising from a delay in the introduction of a new product or enhancement of an existing product, caused by direct physical loss of or damage from an insured peril to insured property that is directly related to the research and development of such products.

11. Professional Fees

This Form is extended to cover necessary and reasonable fees that the Insurer will pay to auditors, accountants, architects, surveyors, engineers or other professional consultants for producing or certifying particulars or details of the Insured's business that are required by the Insurer in the event of a claim.

This Extension applies only to such fees incurred in establishing the amount of a loss, liability for which is otherwise accepted by the Insurer. This Extension of coverage does not apply to the fees and cost of public adjusters.

12. Tenant's Leasehold Interest– Rents

If, as a result of direct physical loss of or damage to insured property from an insured peril, the landlord terminates the lease in accordance with the conditions of the lease, this Extension to cover the difference between the higher rent at the new premises and the rent stipulated in the prior lease for:

- 12.1. the unexpired term of the prior lease; or
 - 12.2. twenty-four(24) months from the date of loss;
- whichever time period is shorter.

The difference shall be calculated on the basis that the new premises are of similar size, condition and location without allowances for improvement.