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# Business Interruption Insurance in the Wake of Supply Chain Disruptions: What Pennsylvania and New Jersey Policyholders Need to Know Post-COVID

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When COVID-19 first disrupted the global economy in March 2020, businesses in Pennsylvania and New Jersey like their counterparts nationwide turned to insurance as a possible safety net. Many policyholders made claims on their property insurance, particularly their business interruption insurance. Insurers responded generally by denying these claims, arguing that the presence of the virus or related shutdowns did not amount to direct physical loss or damage required to trigger coverage. Courts across the country, including those in Pennsylvania and New Jersey, largely sided with insurers.

Yet the lessons of COVID-era litigation continue to shape how corporate policyholders should approach insurance coverage for business interruption in the context of today's economic realities. Supply chain disruptions—whether due to geopolitical conflicts, natural disasters, cyberattacks, transportation bottlenecks, or even tariff-related delays—have become a defining risk for businesses. Companies now must ask whether their existing insurance program meaningfully responds to supply chain losses. And if not, how should they position themselves for future claims and policy negotiations?

This article examines the state of play for business interruption coverage post-COVID, focusing on supply chain disruptions. It highlights key Pennsylvania and New Jersey decisions, national trends, and practical steps policyholders should take.

## **1. The COVID Coverage Battles: Defining Direct Physical Loss**

The central question in COVID-19 business interruption litigation was whether the virus or government shutdown orders caused direct physical loss or damage to property, a prerequisite for coverage under most commercial property policies.

In Pennsylvania, federal and state courts have overwhelmingly ruled that loss of use, without physical alteration, does not meet this standard. For example:

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- **Wilson v. USI Ins. Servs. LLC**, 57 F.4th 131 (3d Cir. 2023): The Third Circuit held that the policyholders loss of use property resulting from the governmental closure implemented in response to the Coronavirus (and COVID-19) did not cause insured physical loss under Pennsylvania law. Specifically, the Third Circuit held: At bottom, loss of use caused by government edict and untethered to the physical condition of the premises is not a physical loss or damage to the properties. *Wilson*, 57 F.4th at 143 (emphasis added).
- **Ungarean v. CNA & Valley Forge Ins. Co.**, 323 A.3d 593, 608 (Pa. 2024): the Pennsylvania Supreme Court stated that direct physical loss or damage exists when there is either: (1) a physical disappearance, partial or complete deterioration, or absence of a physical capability or function of the property (loss), or (2) a *physical* harm or injury to the property (damage). *Ungarean*, 323 A.3d at 608.
- **AC Ocean Walk, LLC v. American Guar. & Liab. Ins. Co.**, 256 N.J. 294, 317-18 (2024) The New Jersey Supreme Court in *AC Ocean Walk* relied on *Wilson* in affirming the dismissal of the policyholders Covid-19 insurance coverage complaint. As the Third Circuit observed with respect to the complaint dismissed in *Wilson* -- in which the plaintiff businesses lost the ability to use their properties for their intended business purposes by virtue of government orders -- such an allegation is completely divorced from the physical condition of the premises, given that the properties were intact and functional and were not destroyed in whole or in part." *AC Ocean Walk, LLC v. 256 N.J.* at 317-18 (quoting *Wilson*, 57 F.4th at 142-43) (emphasis added).

The takeaway: Pennsylvania and New Jersey courts are unlikely to extend business interruption coverage for mere loss of use untethered to some physical destruction or alteration of insured property. This restrictive interpretation poses challenges for businesses seeking coverage for supply chain interruptions divorced from physical destruction or alteration of insured property.

### 1. Supply Chain Disruptions as Business Interruption Events

Unlike pandemic shutdowns, supply chain disruptions may involve more traditional physical damage scenarios. For example:

- A fire at a suppliers factory in Asia halts production of critical components.
- Flooding at a Gulf Coast port delays shipments for weeks.
- A cyberattack disables a key logistics providers warehouse management system.

Such events can trigger contingent business interruption (CBI) coverage, an extension commonly included in property insurance programs. CBI coverage protects against income loss resulting from physical loss or damage to property owned by a supplier or customer.

Pennsylvania and New Jersey courts have not addressed supply chain-specific CBI claims extensively. But case law in other jurisdictions provides guidance. For instance, in **Pentair, Inc. v. American Guarantee & Liability Ins. Co.**, 400 F.3d 613 (8th Cir. 2005), the Eighth Circuit found no coverage when a power outage, not physical damage, caused the interruption. The decision underscores the importance of identifying a covered peril that caused tangible harm to supplier property. *But see Wakefern Food Corp. v. Liberty Mut. Fire Ins. Co.*, 968 A.2d 724,734 (NJ Super. 2009) (loss of use due to shut down of electrical grid constituted insured physical damage: In the context of this case, the electrical grid was physically damaged because, due to a physical incident or series of incidents, the grid and its component generators and transmission lines were physically incapable of performing their essential function of providing electricity.).

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Thus, the critical question is whether the supply chain disruption stems from an event that can be characterized as physical damage to covered property, rather than a purely economic or logistical bottleneck.

### III. Policy Exclusions and Limitations

Even where supply chain events involve physical damage, exclusions may pose hurdles. Common exclusions in Pennsylvania-issued policies include:

1. **Virus/Bacteria Exclusions** Widely invoked during COVID-19. These would likely bar claims arising from infectious disease-related shutdowns of suppliers.
2. **Civil Authority Exclusions** Coverage for government-ordered closures often requires physical damage within a defined radius. Courts narrowly construe this requirement.
3. **Utility Service Exclusions** Losses due to failure of off-premises utilities may be excluded unless specifically added back by endorsement.

Moreover, many policies limit recovery under CBI to direct suppliers or customers. Complex global supply chains often rely on tiered relationships (a suppliers supplier, for instance), leaving gaps in coverage unless policies expressly extend to indirect suppliers.

#### 1. Key Lessons for Policyholders Post-COVID

The pandemic litigation has clarified several lessons that remain relevant to supply chain risk:

- **Documentation is Critical:** Courts require concrete evidence of physical damage, whether to a policyholders own property or a suppliers. Pennsylvania businesses should work with suppliers to document damage events when possible.
- **Policy Language Matters:** Small wording differences physical loss versus loss of use can determine the outcome. Companies should negotiate broad CBI and civil authority provisions.
- **Expect Insurer Resistance:** Insurers vigorously contested COVID claims and will likely challenge supply chain claims as well. Anticipating insurer arguments is essential.
- **Regulatory Trends Are Emerging:** State regulators, including the Pennsylvania Insurance Department, have expressed concern about systemic risks like pandemics and cyber incidents. While no legislation has yet mandated broader coverage, the landscape remains fluid.

#### 1. Practical Steps for Businesses

Corporate policyholders should consider the following proactive steps to protect against supply chain-related business interruption losses:

##### 1. Audit Existing Coverage

Conduct a comprehensive review of property policies, focusing on CBI, ingress/egress, civil authority, and utility service extensions.

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**2. Map Supply Chain Dependencies**

Identify critical suppliers and customers, including tier-2 and tier-3 entities, and assess whether they fall within policy definitions of dependent properties.

**3. Negotiate Broader Endorsements**

Where leverage exists, seek endorsements expanding CBI to indirect suppliers, covering non-physical perils (e.g., cyber), or extending indemnity periods.

**4. Consider Specialized Coverage**

Explore standalone supply chain insurance products, trade disruption insurance, or parametric policies tied to specific triggers like port closures.

**5. Maintain Evidence Protocols**

Establish protocols with suppliers for rapid documentation of physical damage events to support potential claims.

**6. Transfer Risk to Suppliers with Contractual Indemnities**

With a proper indemnity and related insurance requirements, if an indirect supplier is the source of a disruption, the business may seek indemnity from its direct supplier, which may in turn have CIB coverage in connection with its supplier, which was the source of the supply chain disruption.

**1. Looking Ahead: The Post-COVID Insurance Landscape**

The post-COVID world has recalibrated expectations between insurers and policyholders. Insurers have tightened policy language, often expressly excluding communicable diseases and clarifying physical loss requirements. At the same time, policyholders particularly in manufacturing, healthcare, and logistics-heavy industries are more aware of coverage gaps.

Businesses cannot assume that business interruption automatically means protection from supply chain losses. Instead, they must view insurance as one part of a broader risk management strategy, alongside contractual risk transfer (through supplier agreements), diversification of supply sources, and investment in resilience.

As litigation continues to define the contours of physical loss and related concepts, policyholders who take proactive steps now auditing, negotiating, and documenting will be best positioned to navigate future disruptions.

**Conclusion**

The COVID-19 coverage battles reshaped the landscape for business interruption claims in Pennsylvania and New Jersey. While pandemic-related claims were largely unsuccessful, supply chain disruptions present new opportunities and new challenges for policyholders. The key is understanding the limits of existing coverage, pushing for broader protections, and preparing to substantiate claims with evidence of physical damage.

In the wake of unprecedented global volatility, business leaders must approach insurance not as a static product but as a dynamic tool requiring constant attention. With careful planning and proactive engagement, policyholders can better protect themselves against the next wave of supply chain disruptions.

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