

The Boston Globe

Business

Terror exclusions may limit coverage for businesses

By [Callum Borchers](#) | GLOBE STAFF | APRIL 23, 2013

Hundreds of businesses forced to close their doors during the continuing investigation into the Boston Marathon bombings could be denied insurance coverage for lost sales because of terrorism exclusions built into many policies, public officials and attorneys said Monday.

The exemptions — written into roughly 4 in 10 commercial insurance policies, according to the Congressional Research Service — would allow insurers to reject so-called business interruption claims made by some of the more than 400 companies that have been shuttered since a pair of bomb blasts killed three and wounded 282 others on Boylston Street last week.

“The only ones that do have terrorism insurance are the large office buildings,” said Boston City Councilor Michael P. Ross, whose district covers the Back Bay area that remains a crime scene. “Certainly the mom-and-pop businesses are not covered, so that means that this is a straight loss for them.”

The Back Bay Response Team, a new city-run task force, has created an [online questionnaire](#) for businesses, aimed at gauging their insurance status. It is directing those needing legal aid to the Boston Bar Association, which has assembled about 100 lawyers willing to help file claims, pro bono.

“Some businesses don’t seem to know exactly what they have, and we’re starting to work with them on those issues,” said Sheila Dillon, the city’s Neighborhood Services director, who is leading the response team.

Among the uncertain is iFixYouri, a Florida-based electronics repair company whose Newbury Street store was closed most of last week. The company’s marketing vice president, Michelle Zausnig, said she had several phone conversations with insurance representatives but has received no decision about whether a claim will be paid.

“We’re a small business, and we lost a lot of money last week,” Zausnig said. “I know that sounds selfish, considering what some others lost, but it hurts.”

Marathon Sports president Sam Peake said his company's insurance policy does not contain a terrorism exclusion and he is confident he will receive some compensation for damage caused by the first explosion, which erupted just outside his Boylston Street store's door, and for lost sales. But he does not know whether an insurance settlement will match the lost income during what is typically one of the shop's best weeks of the year.

Only a handful of businesses suffered property damage from two pressure cooker bombs allegedly planted near the Marathon finish line by brothers Tamerlan and Dzhokhar Tsarnaev. Many more have been hurt by the aftermath of the attack — a painstaking examination of the neighborhood by federal investigators, which still kept six city blocks cordoned off Monday.

Under another circumstance — a gas main explosion requiring street closures, for instance — these companies almost certainly would be reimbursed for lost profits by their insurers. But after the terrorist attacks of Sept. 11, 2001, insurers sought to exclude acts of terror from business interruption policies. The Terrorism Risk Insurance Act of 2002 created a program in which the federal government shares costs with private insurers. Businesses have increasingly purchased terrorism coverage options since, as prices have declined.

Nevertheless, a report published last fall by the Congressional Research Service estimated only 60 percent of American businesses are insured against damages and losses resulting from a terrorist attack.

Despite the exclusions, "I would hope that insurance companies would do the right thing here for people who have suffered," said Thomas O. Bean, a partner at Verrill Dana in Boston and one of the city bar association's volunteer lawyers.

Insurers are unlikely to pay claims out of sympathy, however. Frank O'Brien, a spokesman for the Property Casualty Insurers Association of America, said his group's member companies understand they may face public criticism for denying claims.

"We're human beings, as well, so that stuff hurts," O'Brien said. "But one of the fundamental pillars of insurance — and of business in general — is that the contract is the contract. Sometimes, we might be perceived as uncaring or heartless, but insurers can only price their products based on the risk they're willing to take on."

Businesses that are not covered by insurance could have few other options. It appears the One Fund Boston is unlikely to aid companies, based on the precedent set by other victim compensation funds administered by attorney Kenneth Feinberg, tapped to lead the nonprofit organization by Governor Deval Patrick and Boston Mayor Thomas M. Menino. Businesses will not be eligible for assistance from the Federal Emergency Management Agency.

~~In the end, companies may be advised to make a peculiar argument that the motivation~~
bombings were, in fact, not terrorism and therefore not subject to exclusion.

Though the attack has been widely labeled terrorism, it has not received an official designation from Treasury Secretary Jacob J. Lew for insurance purposes — a requirement for exclusions to apply.

“Strangely, some of these businesses don’t want it to be called terrorism,” said Randy Maniloff, an attorney who often represents insurers and who edits the trade newsletter Coverage Opinions. “It’s a weird dichotomy.”

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