



DON'T OVERLOOK INSURANCE COVERAGE FOR COVID-19 LOSSES

TIME SENSITIVE!

Businesses are advised not to overlook pursuing insurance coverage for losses sustained by the onslaught of the COVID-19 crisis. It is especially important to keep in mind that many insurance policies have strictly enforced time limits for asserting claims.

The most likely source of coverage for a COVID-19 related loss is business interruption or loss of income coverage provided under a property casualty insurance policy. Coverage may be available for actual physical loss, which may have occurred as a result of the COVID 19 virus crisis. For example, equipment or machinery that becomes inoperable due to lack of maintenance because the responsible employees could not come to work. Or inventory that spoils or otherwise becomes worthless due to the interruption in the business cycle.

In addition, direct contamination can constitute a physical loss or damage to property. However, many policies set forth an exclusion from coverage for physical loss or damage caused by bacteria, toxins and other pathogens. These provisions appear in some, but not all, policies, but claims are nevertheless worth pursuing because the law in this area is not fully developed and there is not clear precedent for the circumstances in which many businesses now find themselves.

Insurance companies may take the position that business interruption coverage will not apply to a loss from COVID-19 due to a lack of physical damage. However, this exclusion does not summarily preclude coverage. In most policies, the direct physical loss exclusion provisions on which insurers would base their denial of coverage is not well defined. Courts have utilized a wide range of interpretations that have frequently found coverage notwithstanding the absence of physical damage.

Also, check to see if your policies contain coverage for environmental contamination or conditions, which coverages can provide insurance for business interruption and acts of civil authority without requiring a physical loss. Checking the specific terms of your insurance policy, and how they operate in the specific context of your business's losses, is imperative. And, keep in mind that these policies often have very short time frames for making a claim.

Keep in mind further that state governments around the country, including New York, have begun to introduce legislation to mandate that commercial business interruption policies include COVID-19 as a covered loss on a retroactive basis.

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Therefore, do not let an initial recommendation by an insurance agent or broker not to file a claim discourage you from continuing to pursue coverage both for the reason that existing law contains some exceptions to the physical harm requirement and because of the potential changes in insurance coverage law that may be enacted and provide for retroactive coverage. Rather, you should insist in writing that your broker file a claim.

Any blanket statement purporting to assert the legal outcome for all claims under all policies in all situations should be taken with a large grain of salt. Different policies have different terms, and the factual circumstances underlying each loss can vary dramatically from case to case.

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