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UPDATE: BUSINESS INTERRUPTED BY COVID-19? CHECK YOUR INSURANCE POLICY FOR LOST BUSINESS INCOME COVERAGE

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UPDATE: COVID-19's rapid movement throughout the world and its seemingly minute-by-minute impact on every area of life includes evolving issues as to business interruption coverage in insurance policies. While the general high-level thoughts articulated in our original publication below remain true – that is, traditional business income policy language raises concerns as to coverage for COVID-19 induced business closures and resulting lost business income, our review of an array of policies over the past few weeks raises the potential for coverage of such claims. In turn, clients should consider further whether to submit claims for potentially covered losses and resulting damages.

For instance, some insurance policies have specific “Microorganisms” coverage, which generally provides coverage for costs associated with direct physical loss of or damage to covered property caused by microorganisms, including cost of removal and repair or replacement of the damaged property, rip and tear costs to get to the damaged property, and testing costs post-repair or post-replacement. Microorganisms coverage also provides for actual loss of business income due to direct physical loss of or damage to covered property caused by microorganisms.

Some policies also include broader language related to business income coverage and suspension of operations due to direct physical loss of or damage to property at a premise. Others, as briefly mentioned in our original publication, also include broader language as to loss of business income due to civil authority declarations causing a suspension or delay in the insured's operations. Some policies also include civil authority coverage extending to lost business income resulting from closures or suspension of operations of “dependent premises,” that is businesses on which the insured depends for its operations (for example, businesses operated by others that are responsible for attracting customers to your business, manufacturing your products, providing source materials or services that you use for your business, or receiving your products or services).

Governmental agencies and legislatures also are weighing in on business interruption coverage. We have already seen Congress reaching out to insurers to seek information regarding this coverage and even to request that the insurers consider waiving coverage exclusions and limitations and providing insurance coverage resulting from COVID-19.

BOTTOM LINE

While there may be concerns as to the existence and the extent of business interruption coverage due to COVID-19, businesses should consider making a claim. The decision to make a claim will depend on the policy language, nature of the loss resulting from COVID-19, the amount of resulting damages, and the policy limits for any applicable insurance coverage.

ORIGINAL PUBLICATION

Among the many disruptions and concerns to businesses caused by COVID-19 is lost income due to closure or limitations on operations. Is there insurance coverage to recoup lost business income? The short answer is probably no, but it depends on the language in each policy. While most businesses have insurance coverage in their commercial property policies for “Business Income” and “Extra Expense” due to a suspension of operations, those coverages usually require the suspension to be caused

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by direct physical loss or damage to the insureds' covered property (for example, its premises). While weather-related events causing damage to a business's property satisfy this requirement (for example, storms, tornados and earthquakes), viruses such as COVID-19 present a unique question of coverage for business losses because there is no physical loss of or damage to property.

If a business must close because of confirmed COVID-19 contamination that requires cleanup and replacement of business personal property, there might be an argument of physical loss of or damage to property that causes lost business income. However, exclusions for microorganisms (mold, bacteria, and can include viruses) that are usually in those policies would preclude coverage. And, while there typically also is "civil authority" coverage in commercial property policies due to actions by government agencies prohibiting access, such coverage too typically requires there be direct physical loss of or damage to property to recover any associated lost business income. Some policies contain broader language making the required direct physical loss of or damage to property to be property within a distance near the business's premises. This language could create an argument supporting coverage if a business is located near a confirmed virus outbreak, but it depends on the breadth of the language and whether there are any exclusions like those identified above.

ENHANCED COMMERCIAL PROPERTY COVERAGE

So, where might a business look for potential coverage of its business losses due to COVID-19? In some industries, such as retail and hospitality, businesses have obtained specific add-on coverage to their commercial property policies for microorganisms that provides reimbursement for business income losses. Usually, though, that coverage is limited to fungi (for example, mold) or certain bacteria, but not viruses, unless specifically included in the definition. And, the policies may still have specific exclusions for viruses or communicable diseases.

ENVIRONMENTAL POLICIES

Another source may be an environmental policy. Environmental policies typically deal with outdoor concerns and not indoor concerns, and therefore have no or limited coverage related to biological contamination. That said, environmental policies have adapted in the last few years to include viruses as pollutants, but only if the policy specifically defines the term "pollutant" to include microbial matters broadly without limitation or to include viruses specifically. In addition, covered damages may not include lost business income unless the policy broadly identifies covered damages to include lost business income.

Finally, while there may not be coverage for lost business income, some policies do provide limited reimbursement coverage for cleanup of identified microorganism damage if the term "microorganism" specifically includes viruses. This coverage is limited to a small amount typically (for example, \$25,000).

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