

Client Alert

Business Interruption Insurance Coverage Issues Arising from the COVID-19 Pandemic

Business interruption (BI) insurance is an optional coverage available as part of a company's commercial property insurance. It is intended to protect businesses against income losses and extra expenses sustained as a result of certain disruptions in their operations arising from a "covered cause of loss." There may also be riders, endorsements and other types of specialty coverage policies such as Dependent Property Time Element coverage that may address losses relating to the COVID-19 Pandemic.

In order to ascertain whether you have coverage and the type of losses that may be covered, some factual questions to consider include:

- Is your business interruption policy a standard ISO policy?
- What exclusions are there to your policy and, what other policies may address losses arising from the COVID-19 Pandemic?
- Is there or has there been a known or suspected coronavirus contamination in your business premises or in other tenants' spaces or the common areas of your building?
- Has any employee of your business tested positive for coronavirus?
- Has a customer who has visited your business premises tested positive for coronavirus?
- Have you had to close your business premises as a result of known or suspected COVID-19 contamination in your business premises or in other tenants' spaces or the common areas of your building?
- Has premises upon which you rely on to remain in business closed because of COVID-19 contamination anywhere in the building?
- Have you been ordered to close your business by a local, state or federal authority (and identify facts to support why your business should be closed)?

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- Have you incurred expenses in setting up a temporary business location?
- Did you obtain coverage from a broker and, if so, what representations did the broker make in regard to what the policy would cover?

Another issue to consider is a possible errors and omissions claim against your insurance broker. Broker liability law differs from state to state, however, New Jersey recognizes broad broker liability in tort, while some states like New York have narrower contract-based broker liability.

We note that many consider the analog to business interruption insurance to be rent insurance which generally protects against loss of a contractual stream of income, such as rental income paid by a tenant to a landlord, and should be considered where applicable to the context.

Finally, please note that certain governments are considering legislation to help policyholders in dealing with certain exclusions under standard BI policies.

If you have business interruption questions, please contact Tom Novak or Elissa Glasband and provide us with your policies including riders and endorsements.

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