
Business Interruption Insurance for COVID-19

FG Law Blog

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With the government shutdown of businesses due to the COVID-19 virus, many business owners are wondering if there is insurance coverage for their revenue losses. As an insurance coverage lawyer who deals with these types of policies, here are some of my thoughts:

1. Property policies vary widely in their language, and can be tailored to different kinds of businesses. For example, our firm's policy is written on a form that is said to be tailored to lawyers. What is provided in one policy may not be provided in another.
2. In order to obtain coverage under these policies, you normally need to show that the loss was due to "direct physical loss or damage" to the property. States construe that differently, but in New Jersey there are cases holding that as long as the insured is unable to use property because of a condition, there is direct physical loss or damage to the property even if there is no visible damage. In cases where a civil authority prohibits the business from being open, the argument may be strengthened. The question here is whether the virus makes the property in question unusable.
3. Some, but not all property policies contain "virus" exclusions. Others may try to include this in the pollution exclusion, but in one version reviewed, those efforts may have rendered the policy language ambiguous and therefore ineffective. The New Jersey Legislature, and now the legislatures of other states, are considering whether to make these virus exclusions unenforceable. If enacted, the question would then be whether such laws would be constitutionally infirm for existing policies.
4. If there is coverage for business interruption, it may be subject to sub-limits which in one sense favor the insurer, but also make it easier to establish coverage. If the insurer's exposure is less, a court is more likely to side with an insured in a close case if there is a suit filed.
5. There have already been suits filed concerning this issue. By no means is it clear that coverage will be afforded, but my suggestion generally is that, if in doubt, a claim should be made because unlike liability policies written on an occurrence basis, first party claims need to be filed promptly and procedures in the policy need to be timely followed.

Mitchell Kizner focuses his practice on environmental and insurance litigation. He represents clients in environmental, insurance and other commercial matters as part of his active litigation and commercial law practice. For more details on the legalities of Business Interruption Insurance, contact Mitchell or any member of Flaster Greenberg's Insurance Coverage Practice Group.

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covid-19 resource page

*To serve as a central repository of information and contributions from Flaster Greenberg attorneys on legal developments during the COVID-19 crisis, we have launched a **COVID-19 Resource Page** on our website. Feel free to check back frequently for Flaster Greenberg's ongoing analyses of important legal updates that may affect you or your business.*

ATTORNEYS MENTIONED

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