

Update on First Party Property Coverage Issues re: COVID-19

Business interruption coverage during the COVID-19 pandemic continues to be a heavily debated topic across the U.S.

In New Jersey, lawmakers and insurers are presently in discussions concerning potential changes to bill A3844, a bill which would retroactively expand business interruption coverage to include losses from COVID-19. The bill had been set for a vote last week but was pulled to give insurers more time to address the issues presented by the ongoing pandemic. As the bill is originally intended, it would apply to commercial property policies which inceptioned on or after March 9, 2020 that insure New Jersey businesses with fewer than 100 full-time employees. If enacted, the bill will effectively rewrite these policies to include business interruption coverage due to the "global virus transmission or pandemic".

It should be noted that insurers paying these claims would potentially be eligible for reimbursement from the N.J. Dept. of Banking and Insurance pursuant to standards not yet established by the department.

In Broward County, Florida, a new Emergency Order was issued, which states as follows:

"Whereas, this Emergency Order is necessary because of the propensity of the virus to spread person to person and also because the virus is physically causing property damage due to its proclivity to attach to surfaces for prolonged periods of time."

This would appear to be another means to intentionally trigger coverage in Florida for business interruption loss caused by COVID-19.

Also last week, members of Congress sent a letter to 4 insurance industry trade organizations - National Association of Mutual Insurance Companies, Independent Insurance Agents and Brokers of America, American Property Casualty Insurance Association and Council of Insurance Agents and Brokers - urging insurers to provide business interruption coverage for COVID-19. According to the letter, the congressmen argued that COVID-19 fulfills the requirement of "direct physical loss" or damage to property and local curfew and "shelter in place" orders trigger civil authority coverage as well. Insurers were urged to accept claims for business interruption caused by COVID-19 related shutdowns.

The four insurance industry groups responded with their own joint letter, which stated that the business interruption coverage does not "and were not designed to, provide coverage against communicable diseases such as COVID-19." The letter went on to say that prompt payments would be made where coverage exists.

The four insurance industry groups went on to state that they have begun to work with policyholders on flexibility in premium payments and charitable relief efforts. They also called on federal assistance to provide funding to those individuals and businesses most in need.

Stay safe!

KD's Insurance Coverage & Litigation Practice Group is continuing to monitor the evolving laws and regulations governing insurance and litigation matters in the wake of the Coronavirus pandemic. It is always a good idea to check your state's laws as well, since they, too, are changing almost daily in response to this global crisis.

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