

June 23, 2020

LITIGATION PRACTICE UPDATE: BUSINESS INTERRUPTION COVERAGE

There is hardly any aspect of American life that has been left untouched by the COVID-19 pandemic, and many businesses are facing unprecedented financial strains. There are a number of public and private resources and relief programs available to businesses seeking to make up for lost income, but one option that may be flying under the radar is the potential availability of business interruption insurance coverage.

Business interruption coverage will depend on your particular policy's language, but under many policy forms it typically covers short term financial loss arising from interruption to business operations as a result of physical loss or damage to the property of the insured. It is common for policies not to define in any detail what constitutes a "physical loss" to the property.

There is much debate as to whether COVID-19, and the resulting stay-at-home orders, are sufficiently physical in nature, such that business interruption insurance policies should cover loss of income triggered by the COVID-19 pandemic. As with most things related to COVID-19, uncertainty is currently the norm, not the exception. There is very little case law, in North Carolina or any other jurisdiction, on business interruption coverage and pandemics. Cases from various jurisdictions nationwide have held in the past that contamination of property by chemical vapors, e-coli bacteria, asbestos fibers, and other foreign substances may constitute a "physical" loss when they render property essentially unusable for its intended purpose.

Lawmakers in Pennsylvania, Louisiana, New York, Ohio, Massachusetts, and New Jersey have introduced legislation that would force insurers to retroactively cover business interruption claims due to COVID-19. President Trump, during his COVID-19 task force press conference on April 10, 2020, stated his opinion that insurance companies should cover COVID-19-related losses, unless the policy specifically excluded viruses and pandemics. However, the U.S. Department of the Treasury has expressed concern about proposed legislation to compel insurers to pay business interruption claims arising from the COVID-19 pandemic.

While it is hard to predict whether the nation's lawmakers will ultimately step-in, or how courts will address COVID-19 business interruption claims, companies should take steps now to ensure that their interests are protected. The first step is to locate and review your policy in detail, and if you do not have a complete copy of your policy, request it from your insurance company. In addition to noting the types of losses covered in your policy and the policy's coverage exclusions, you should identify the required notice period. Most policies require that the insurance company be notified by the policyholder of a loss within a certain time period. Further, it is important that you document the

impact of COVID-19 on your business and keep precise records, as the success or failure of an insurance claim can depend on it.

Navigating the language and structure of an insurance policy can be difficult and seem confusing by design. It is hard enough to run a business in this economic climate without the additional burden and stress of determining whether your company is leaving a potential business interruption claim on the table. The attorneys at Johnston, Allison & Hord, P.A., are ready to help. If you have questions about your policy or believe that you might have a potential business interruption claim, please call or email any of the attorneys from our Litigation Practice.