



COVID-19 AND BUSINESS INTERRUPTION INSURANCE

As we all follow the news of COVID-19 and its uncertain course, our firm aims to ensure that our clients remain informed of potential impacts to their businesses.

One area that will be closely scrutinized is insurance coverage for “business interruption,” which, in a typical commercial property insurance policy, is intended to protect the insured against income losses resulting from disruptions to business operations. Some policies may also include contingent business interruption coverage for income losses resulting from disruptions to the insured’s supplier.

While the extent of coverage for business interruption is highly dependent on the language of the policy itself, relevant considerations include:

- Is there “direct physical damage or loss?” This is often a requirement for business interruption coverage. How courts may handle this issue in the context of COVID-19 is to be seen, but case law in other areas helps to shed light on potential outcomes.
 - Insurance carriers may argue that this element is not met, especially in instances where the virus has not directly impacted the insured’s operations or entered its premises. *Cf. Mastellone v. Lightning Rod Mut. Ins. Co.*, 884 N.E.2d 1130, 1144-45 (Ohio Ct. App. 2008) (as to a homeowners’ policy, mold which could be removed by cleaning was not “physical damage,” as it did not alter or otherwise affect the structural integrity of the building’s siding).
 - Where the virus has entered the premises, policyholders could argue that the virus constitutes physical damage or loss. *Cf. Gregory Packaging, Inc. v. Travelers Prop. Cas. Co. of Am.*, No. 2:12-CV-04418 WHW, 2014 WL 6675934, at *8 (D.N.J. Nov. 25, 2014) (finding that “ammonia-induced incapacitation constituted ‘direct physical loss of or damage to’ Gregory Packaging’s facility”). In this vein, some courts hold that physical loss occurs where property becomes uninhabitable or substantially unusable. *See Universal Image Prods., Inc. v. Fed. Ins. Co.*, 475 F. App’x 569, 574 (6th Cir. 2012) (citing cases).
 - A New Orleans restaurant is already testing this theory. Yesterday, in response to local restrictions on restaurant operations, a lawsuit was filed in Louisiana state court, seeking a declaration of coverage for coronavirus-based financial losses (*Cajun Conti, LLC, et al. v. Certain Underwriters at Lloyd’s London, et al.*, Civil District Court for the Parish of Orleans, Louisiana). *See* <https://www.coverageopinions.info/Vol9Issue2/FirstCOVIDcase.html>. The complaint alleges that the virus infects and remains on the surface of objects for up to 28 days.
 - It is noteworthy that the complaint specifies that there is no Virus Exclusion in the relevant policy.
- Have directives from state and local governments impacted coverage? Some commercial property insurance policies provide coverage for business income losses sustained when a civil authority prohibits or impairs access to the policyholder’s premises.
 - The answer to this usually depends on whether there has been a “denial” or “prohibition” of access to the premises. Merely impeding or regulating access to the premises may not be sufficient to invoke coverage.

