

## Insurance Coverage for Coronavirus Claims - *Client Newsletter*

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In the coming weeks and months, many businesses may lose customers and sales as a result of the coronavirus (COVID-19) pandemic. These businesses will need to assess whether the risks of loss are covered by existing insurance policies.

Business interruption insurance is typically purchased as part of a company's commercial property insurance policy. Business interruption insurance protects businesses against income losses sustained as a result of disruptions to operations. However, many commercial property insurance policies provide that business interruption coverage is only triggered when the policyholder sustains "direct physical loss of or damage to" insured property by a covered cause of loss (e.g., a fire to business premises resulting in income loss). Whether a business's coronavirus-related losses have triggered a policy's "physical loss" requirement will depend upon the facts and circumstances of the loss, the policy's terms and conditions, and the laws of the relevant jurisdiction.

Policy exclusions may also limit the availability of business interruption coverage for coronavirus-related losses. Infectious disease/virus exclusions became more prevalent in commercial property policies following the Severe Acute Respiratory Syndrome (SARS) outbreak in 2003. In anticipation of a denial of coverage by insurers whose policies contain these exclusions, the New Jersey legislature is considering extraordinary legislation. Assembly Bill A-3844 would compel business interruption insurers to cover business interruption losses even if their policy contains a virus exclusion. It would apply to insureds with less than 100 employees and the costs for coverage would be borne by all insurers operating in New Jersey, with the exception of life and health insurers. Whether this new requirement would withstand judicial scrutiny is an open question.

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Under civil authority coverage, commercial property policies may provide coverage for losses when access to an insured's premise is prevented by order of a governmental authority. Depending on the specific wording of the policy, civil authority coverage may or may not require that the denial of access result from physical loss covered by the policy. Coverage is more likely to exist in policies that do not contain a physical loss requirement. However, depending on the policy language and laws of the relevant jurisdiction, an insured may be able to satisfy a physical loss requirement merely by establishing property damage in the vicinity around an insured's property, as opposed to demonstrating damage to the insured's own property.

Business owners, particularly in the hospitality and health care industry, may face third-party claims from individuals arising from the coronavirus. As such, business owners should evaluate what liability policies they have in place (e.g., Comprehensive General Liability, Directors & Officers, Errors & Omissions) that may respond to coronavirus-related liability claims.

Pashman Stein Walder Hayden is available to review your insurance policies and provide advice as to the availability of coverage for losses resulting from the coronavirus pandemic.