Insurance Recovery & The Corona Effect: Responding To Coverage Defenses For Business Interruption Claims

By Micah E. Skidmore | April 3, 2020

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While the financial impact of quarantines and shelter-in-place orders will inevitably reach into every industry and every corner of the economy, companies in the hotel, restaurant, travel, retail and manufacturing sectors have already sustained significant business interruption losses. Much of the commentary from insurers and even some government agencies has been presumptively negative about the prospects for coverage. However, after reviewing numerous commercial property and builders' risk policies over the past several weeks, many policyholders have good reason to pursue claims for recovery.

Corporate policyholders are likely to face at least two coverage defenses in response to claims for COVID-19-related business interruption loss: (1) denial of "physical loss or damage"; and (2) the alleged application of "communicable disease" or related "virus" exclusions. Subject to individual policy terms, these defenses are not insurmountable, and the potential exists for substantive recovery for those businesses suffering loss of income.

"Physical Loss or Damage"

First, most general lost profits/business income coverage will require "physical loss or damage," and sublimited coverages for civil authority, ingress/egress and related provisions may also require that a governmental order or loss of access be the result of "physical loss or damage" to another property within some proscribed distance of the insured premises. In response to COVID-19 claims, insurers will inevitably deny the existence of any "physical loss or damage" for purposes of these coverage grants.

To read the full alert, please click on the PDF linked below.

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