



Coronavirus:
Update and Discussion on Continuing Legal
and Practical Issues Related to COVID-19

A Bond Webinar Series
July 14, 2020


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Introduction



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DOH Emergency Rule



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Reopening Update – Where Are We (Phases, Industry Guidance, Updates)



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Business Interruption Insurance Claims in the Age of COVID-19



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Business Interruption Insurance Claims in the Age of COVID-19

- First Rule of insurance claims – read the policy!
 - Specific terms and conditions of the policy determine the insurer’s liability with respect to the “peril” insured against and the nature, amount and computation of “covered loss”
 - Business interruption coverage may be part of “multi-peril” or global “business owners” coverage
- Important factors on Business Interruption Claims:
 - “Property damage” (example: fire)
 - “Business Income” loss (often net profits) is related, but not identical



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Business Interruption Insurance Claims in the Age of COVID-19

- Notable Trends

- Arguments by insurers that governmental restrictions such as “stay home” mandates do not constitute “physical damage” or “physical loss”
- Arguments by insurers asserting that “physical damage” from COVID-19 “contamination” could be promptly remediated and/or avoided, thereby limiting losses
- Arguments by insurers that policy exclusions (where applicable) bar claims based on virus or disease
- Arguments by insurers based on late notice of claim



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Business Interruption Insurance Claims in the Age of COVID-19

- Notable Trends

- Arguments by claimants that “direct physical loss” requirement is satisfied by COVID-19 “contamination” of business premises, requiring remediation
- Arguments by claimants that “direct physical loss” requirement is satisfied by suspension of “operations” due to measures to avoid COVID-19 transmission (including “stay home” mandates, and related “civil authorities clause”)
- Arguments by claimants that “direct physical loss” is not limited only to “physical damage” (as would occur with a fire).
- Challenges to virus or disease “exclusions” for ambiguity in language and/or inapplicability
- Arguments asserting “bad faith” claims for failure to perform full investigation prior to issuing denials



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Business Interruption Insurance Claims in the Age of COVID-19

- Things to watch
 - Legislative initiatives
 - New York
 - Pending decisions determining scope of policy exclusions



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What is Ahead – A Look Forward



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What is Ahead – A Look Forward

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