



NEW YORK STATE LEGISLATURE LOOKS TO BROADEN BUSINESS INTERRUPTION COVERAGE

Insurance companies have been rejecting business interruption insurance claims from customers whose businesses have been forced to close during the COVID-19 pandemic, arguing that because there has been no physical loss to property caused by COVID-19, such coverage will not apply. Although many insurance policies have exclusions for viruses, pandemics and contagious/infectious diseases and the policy language generally requires direct physical damage to the property to trigger coverage, there are exceptions, and a careful review of the policy itself is recommended.

In order to address this emerging issue, New York is the latest state to introduce proposed legislation ([Assembly Bill A10226](#)) to provide relief to small businesses for COVID-19 business interruption losses. The new bill is intended to require insurers to retroactively cover business interruption losses arising from the COVID-19 crisis despite the exclusions and general limitations discussed above.

If passed, the bill could circumvent the need to pursue such arguments in court, and legally mandate insurers to indemnify businesses with fewer than 100 full-time employees for “any loss of business or business interruption for the duration of a period of declared state emergency due to the coronavirus disease 2019 (COVID-19) pandemic,” subject to the limits under their policies. Insurance coverage would cover losses due to COVID-19 from March 7, 2020, the date New York Governor Andrew Cuomo declared a state of emergency, until such time as the state of emergency is lifted. It is important to note, however, that there remains a question as to the constitutionality of these efforts and whether state insurance regulators will be able to enforce this proposed legislation.

Meanwhile, until state legislators take action, New York’s state insurance regulator, the Department of Financial Services, has published guidance urging insurance companies to alleviate the adverse impact caused by COVID-19 on those consumers and small businesses that can demonstrate financial hardship caused by COVID-19, including providing insureds with a clear and concise description of benefits that may be triggered as the COVID-19 situation continues to evolve.

Oved & Oved LLP is actively monitoring New York’s pending legislative and regulatory efforts in connection with insurance policies affecting businesses. If you are wondering whether your insurance policy contains business interruption coverage, have questions regarding the process by which to file a claim with your insurance company, or believe your insurance company has improperly rejected your claim for insurance coverage during this particularly tumultuous period, please do not hesitate to contact us. Our expert attorneys are available to assist in guiding you through this complex process.

CLIENT ALERT

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