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Coronavirus: Hidden Gems in your Insurance Coverage

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In recent weeks, there has been a flood of general advice from brokers, insurance lawyers and others opining that there may – or may not – be insurance coverage for coronavirus losses under various types of insurance policies for business interruption or other losses and liabilities. What you may not know is that specific provisions buried in a 100+ page insurance contract may provide coverage you did not realize you had. Slight nuances in policy language or applicable law are important and should be analyzed by experienced coverage counsel. The pandemic is causing substantial business losses in a variety of ways that may not have been contemplated before, which should also be carefully analyzed. The details not only matter, they may mean the difference between keeping your business afloat and financial catastrophe.

Business interruption coverage, for example, may be available from a variety of policy provisions that vary greatly from insured to insured and industry to industry. For example, we have seen commercial property policies containing multiple avenues of business interruption coverage for these losses, such as coverage for loss resulting from infectious disease, and broadened "civil authority" provisions that extend coverage for a restriction of access in the vicinity of the insured location, whether or not there was property damage as defined in the policy. We also have seen contagious disease endorsements that cover property damage as a result of the existence of a contagious disease, as well as provisions covering business interruption loss if the insured limited access to the properties in anticipation of the disease, even without an order of civil authority.

Even if your policies do not have express provisions like these, there are differences in policy language, law and state regulation. "Property damage" may include circumstances, like viral exposure or contamination, that preclude or limit occupancy. Policyholders and their advisors also need to examine "sue and labor"/"preservation of property" clauses, as some provide coverage for expenses incurred in response to an imminent threat of damage. Covered property damage may also result during the process of mandatory shut down.

In addition, the responses of various states are evolving in real time. The New York State Department of Financial Services is requiring commercial property insurers to publicly declare their coverage positions on business interruption coverage, which could result in pressure to provide such coverage, but may also contain overly general and misleading statements of coverage. New Jersey is considering legislation to compel insurers to provide coverage even if they have a virus exclusion in the policy.

These types of hidden gems may also exist in your business' general liability, errors and omissions, event cancellation, builders' risk, and directors' and officers' coverage.

The bottom line is this: these are extraordinary times and you should not make any assumptions about your coverage. Details matter. Expertise matters. Let us know if we can help.

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