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“Is loss of business income resulting from the COVID-19 pandemic covered under business property insurance policies?”

As this question steadily navigates its way through the insurance claims process throughout the country, more than 1,000 complaints have been filed in state and federal courts against insurance companies in an attempt to establish that coverage does exist.

While insurance is governed individually by state, here’s a quick update on the top three COVID-19 insurance issues nationally and where they stand today:

1. Does COVID-19 physically damage property?

a. Business income coverage under property insurance policies is triggered by direct physical loss or damage to insured property.

b. Insurance companies have rejected COVID-19 related business income claims stating that the COVID-19 virus does not cause “direct physical (tangible) damage or loss of property.

c. Policyholder complaints assert that “direct physical loss or damage” does not require a tangible change to property but just the loss of functionality.

d. Policyholders also claim that the term “direct physical loss” is not clearly defined in some policies and therefore the causal link between COVID-19 and their losses creates a basis for coverage.

e. In general, courts have found that COVID-19 has not caused direct physical loss to insured property. However, there are cases pending where the term “direct physical loss” is not defined or the wording is unclear.

2. Do policy exclusions for Loss Due To Virus or Bacteria apply to COVID-19?

a. Virus exclusions typically read something like, “We will not pay for loss or damage caused by or resulting from any virus, bacterium, or other microorganism that induces or is

capable of inducing physical distress, illness or disease.

b. Not all policies contain a virus exclusion.

c. Policyholder complaints question whether COVID-19 fits into the standard virus exclusion due to its unusual circumstances and unique impact on society.

d. Courts have deemed the virus exclusion inapplicable in cases where the virus was not present at an insured location. This does not mean coverage applies for COVID-19 losses, it simply means that the virus exclusion is not applicable.

3. Do Stay at Home Orders trigger Civil Authority coverage?

a. Policyholders allege that their customers, employees and other visitors could not access their physical place of business due to Stay at Home Orders put in place to prevent infection or the spreading of COVID-19 and that a Stay at Home Order should trigger Civil Authority coverage.

b. Civil Authority coverage applies when an order of civil authority prohibits access to the insured premises due to physical damage to property (other than the insured premises) by a peril covered under the property policy. The denial of access must be the cause of the loss of business income.

c. Civil Authority coverage typically carries a sublimit such as \$100,000, and typically ends 4 weeks after the date of the action.

d. Insurance companies are denying these claims, again, on the basis that no insured physical damage occurred.

e. Courts are still in discovery to determine the merits of civil authority coverage claims.

With all that has happened this past year (fires, COVID-19, weather related destruction, etc.) now is the time to make sure that your business insurance policies are up to date with the latest coverage and endorsements. The worst time to find out if your policies are outdated is after you file a claim.

As a wholly owned subsidiary of Acrisure LLC, one of the largest insurance brokers in the U.S., we are offering an unbiased, no obligation, complimentary, written analysis of your current coverage for adequacy and compliance.

*The process is simple and typically takes about 48 hours. Just **Email us** and we will take it from there. We look forward to working with you.*

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