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# Today's Business: Commercial property insurance: Relief for business interruption due to COVID-19?

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David A. Slossberg Contributed photo

Can business interruption insurance help firms that have been hurt by the pandemic?

Businesses have sought different ways to stay afloat. Some have applied for available federal government assistance, such as through the Payroll Protection Program. Government relief generally has been tailored to help cover payroll and other business expenses. Firms have been left to identify and pursue other means to recover the income lost due to government-ordered closure, or from losses naturally flowing from the coronavirus pandemic.

As a result, businesses increasingly have been pursuing relief under their private commercial property insurance policies for business interruptions caused by

COVID with, at best, mixed results. The chance of success is highly dependent on the language of the individual insurance policy at issue.

Business interruption coverage most commonly applies when there is a natural disaster, such as a fire or storm. This insurance covers damages flowing from the closure of a business, and also may cover damages flowing from the closure of customers' or suppliers' businesses. The key to recovery is the ability to demonstrate that there was a direct physical loss or damage to covered property caused by the natural event.

Some policies also include what is called Civil Authority coverage, which permits recovery for damages flowing from government orders that cut off access to one's property. This coverage, although not requiring proof of damage to the insured's property, often requires a showing that the government order arose from underlying property damage. In the recent cases claiming losses for COVID under Civil Authority provisions, courts have focused on whether the government order is based on a finding that COVID is actually present on the subject property.

In analyzing any policy, it makes sense to first look for any provisions that expressly exclude the claim. Many policies contain what are called "virus exclusions." While virus exclusion language varies from policy to policy, and has evolved over time, an example is language that excludes recovery of "damage caused directly or indirectly by ... any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease." One Connecticut District Court has held this language to preclude recovery for any damages resulting from COVID.

In the absence of an applicable exclusion, the central question becomes whether the presence of the coronavirus that is spread through the air, but survives on surfaces for days, and interferes with the ability to use property, causes tangible property loss or damage. The insurance industry has argued that COVID claims are not covered because the existence of the virus on property surfaces does not actually cause physical damage to that property, claiming that actual physical property damage is a prerequisite to coverage. By contrast, where the policy language covers "physical loss or damage," insureds have argued that deprivation of the use of property is covered. Insureds rely on several arguments, including the use of the word "or," the lack of suitably defined terms,

and that any ambiguities in the policy language must be interpreted as against the insurance company.

There are a variety of other arguments that may be made by insureds seeking business interruption coverage depending on the applicable language in each case. It is important for businesses considering available coverage to thoroughly review the policy language so that arguments for coverage can be carefully tailored to address the particulars of that policy. Indeed, at the litigation stage, the skill with which the complaint is drafted may be the difference between winning and losing a business interruption case.

Hardworking businesspeople should take advantage of all available remedies to combat the losses due to COVID. One such remedy may already be available with the right commercial property coverage.

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