

COVID-19 Claim Memo Phase 2

Dear Client;

Now that claims are getting filed and underway, we are starting to see the responses we expected. Most insurance companies have created dedicated claim teams to handle COVID-19. These claim teams are, in general, required to make contact with policyholders and disclose policy limitations that may apply. We would fully expect adjustors to begin calling our clients and disclosing that the business income policies require some physical damage due to a covered peril and some exclusions including "Bacteria, Virus, or Communicable Disease" exclusions may apply. Both the lack of a covered peril and the presence of the virus exclusion are barriers for coverage.

Therefore, our recommendation at this time is to extend the life of the claim until more facts are known. Some suggested tactics that we suggest you take when speaking to adjustors and that we (EB Cohen) will be taking to support your claim include the following:

- The policyholder is currently investigating the various causes of the loss
- The policyholder is identifying what physical damage may exist
- The policyholder is identifying whether any inventory has been damaged
- The policyholder is identifying what governmental restrictions or mandated closings are applicable to their business
- The policyholder is identifying what access to their business exists or has been denied

In short, it is too early to know all the facts contributing to the business income loss and the causes of loss at this time.

While we would like to know a favorable coverage position from a carrier if that were the case, the reality is that carriers are reviewing the insurance policy language and creating coverage positions at this time. In some jurisdictions, like New York, carriers are being required to make coverage position letters at this time. These are likely to indicate coverage denials, especially based on the information available at this time and the policy language.

Please note that we have spoken with several coverage attorneys who seem to share the belief that extending the life of the claim while investigating is the best course at this point in time. They also share our understanding of the challenges regarding the Business Income coverage under most Property Policies. Some of our clients are speaking directly with coverage counsel to discuss their specific insurance coverage. If you would like to engage with an insurance coverage attorney, and would like a referral, we would be happy to refer you to qualified attorney.

Meanwhile, legislative initiatives in various jurisdictions are continuing. We will keep monitoring and provide updates as they are available.

Sincerely,

A handwritten signature in black ink that reads "Neil A. Owens". The signature is written in a cursive, flowing style.

Neil A. Owens, CIC, Esq. | Senior Vice President

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