



COVID-19: Insurance Coverage for Construction Projects

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Reading Insurance Policies



Business Interruption

- Property Policy
- Builder's Risk Policy

Business Interruption

- Coverage Clause: Three Elements
 - Loss (physical)
 - To covered property
 - From specifically named perils, or all risks not excluded

Business Interruption

- “Loss means direct physical loss or direct physical damage.”

Business Interruption

- What is physical? Can be perceived by 5 senses.
- *Gregory Packaging, Inc. v. Travelers*: “Property can sustain physical loss or damage without experiencing structural damage.”
- Instead, generally requires that property be “uninhabitable” or “unusable.”

Business Interruption

- Covered Cause of Loss
 - Named Perils
 - All Risk
 - Watch Out for Exclusions

Exclusion of Loss Due to Virus or Bacteria

We will not pay for loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease.

Pending Legislation

- Louisiana, Massachusetts, New Jersey, New York, Ohio, and Pennsylvania
- Would require insurers to cover business interruption losses from COVID-19

Pending Legislation

- Retroactive?
 - “Existing Policies” What if you renew?
- Limitations?
 - Small Companies (MA <150; others <100)
- Funding? Who is paying for this?
 - collecting pro rata from all licensed insurers
 - collecting only from property and casualty insurers
 - collecting only from business interruption insurers

Additional Coverages

- Soft Costs
- Civil Authority

Soft Costs

- Expenses incurred during a delay of the project
- Directly caused by a covered cause of loss
- Very specific expenses:
 - Extra interest on borrowed money
 - Architect, engineer and consultant fees
 - Legal fees for lease negotiation

Civil Authority

- Extra coverage under Business Interruption
- Loss of business income, extra expense and contract penalties
- Caused by “action of civil authority” that prohibits access to your site
- Do you need a physical loss?

Thank You

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