

Client Alert

Insurers' COVID-19 Notepad: What You Need to Know Now (Week of March 30)

March 30, 2020

Business Interruption Suits Against Insurers

Native American Chickasaw and Choctaw tribes sued several insurers in Oklahoma court seeking coverage for financial losses sustained in connection with the COVID-19 pandemic. The Tribes contend that their casinos and related hospitality operations cannot be used for their intended purpose in light of civil emergency orders. In its suit, the Chickasaw tribe asserts its “all risk” insurance policy covers COVID-19 related business interruption.

Renowned restaurants The French Laundry and Bouchon Bistro sued their insurer in California state court seeking to recover, among other things, losses sustained by restaurant operations following an ordered shutdown. *See In French Laundry Partners, LP dba The French Laundry, et al. v. Harford Fire Insurance Company, et al.* The insureds seek coverage under an “all risks” policy for business income losses arising out of an order issued by Napa County. The complaint claims that the Napa County order triggers coverage as the “policy's Property Choice Deluxe Form specifically extends coverage to direct physical loss or damage caused by virus.”

Limited COVID-19 Coverage Endorsements Released

Verisk released two optional endorsements for use with Insurance Services Office (ISO) commercial property forms to provide limited business interruption coverage due to actions by civil authorities in order to avoid or prevent infection or spread by or from the novel coronavirus.

Reinsurance

Rating agency Fitch reported on March 23, 2020 that it expects reinsurer ratings to be placed on a negative rating watch due to projected COVID-19 related losses.

State Insurance Commissioner Actions

The **California** Insurance Commissioner directed insurance companies to submit data to the California Department of Insurance regarding coverage of commercial business interruption related to COVID-19 no later than April 9, 2020. Commissioner Lara stated “[t]he data will help state policymakers to understand the scope of insured and uninsured losses to businesses in order to help them recover and keep workers employed.”

The **Connecticut** Insurance Department issued bulletin number IC-40 on March 24, 2020 “requesting that all insurance companies provide their insureds with at least a 60-day grace period to pay insurance premiums so that insurance policies are not cancelled for nonpayment of premium during this challenging time due to

circumstances beyond the control of the insured.” The bulletin clarified that the “requested grace period is intended to be applied to premiums due after the initial premium has been made to secure coverage.”

Georgia Insurance and Safety Fire Commissioner John F. King issued a directive to property and casualty insurers on March 20, 2020 not to cancel any commercial policies for non-payment, particularly those dealing with business interruption or business income coverage, for the next 60 days. In addition, the Commissioner issued Bulletin 20-EX-3 describing coverage in the context of Business Interruption Insurance and COVID-19.

The **Kansas** Insurance Department has issued COVID-19 FAQs, which note that “it is the Department’s understanding that it is unlikely that a business policy would cover losses related to COVID-19, as most business policies have communicable disease exclusions.”

The **Louisiana** Department of Insurance has posted Business Interruption Insurance FAQ which provide: “If I have to close my business temporarily because of fear of contracting the virus in public places, can I claim business interruption? [Answer:] Just because a civil authority orders travel restrictions or closes public spaces does not necessarily mean you have a covered loss under your business interruption policy. Check with your insurance company or agent to see if your policy covers an epidemic or pandemic.”

The **Maryland** Insurance Administration issued bulletin number 20-12 on March 23, 2020, which encouraged “all Property & Casualty insurers to consider making rate filings that provide temporary relief to insureds during this [COVID-19] emergency.” The bulletin also instructed that “[f]ilings may take the form of a premium discount for specific perils or coverages, or any other appropriate reduction in premium commensurate with reduced loss exposure,” and that the Administration would waive fees and expedite review for rate relief filings. In addition, the Maryland Insurance Administration has posted an Advisory on Business Interruption Insurance.

The **Minnesota** Commerce Department has issued a Consumer Alert: Business Interruption Insurance and COVID-19. The alert comments that “The State of Emergency declaration does not change the terms of your business interruption coverage, but does indicate the seriousness with which the Governor has directed state agencies to treat the COVID-19 pandemic. Many policies include very specific language regarding Emergency Declarations. Declarations in and of themselves do not automatically result in a situation where business interruption claims are within the scope of the policy language.”

The **Mississippi** Insurance Department issued Bulletin 2020-3 on March 24, 2020 declaring a sixty (60) day moratorium on the cancellation/non-renewal of policies for the non-payment of premiums, effective March 14, 2020. The bulletin clarified that the “moratorium shall apply to all policies issued or issued for delivery in this State,” and that the “moratorium is not a waiver of premium; rather, it is a moratorium on the cancellation or non-renewal of policies for the failure to pay premiums during the applicable 60-day period.” The Department also issued questions and answers concerning the bulletin.

The **New Hampshire** Insurance Department issued Bulletin Docket No. 20-021-AB on March 24, 2020, which addresses signature requirements for property and casualty insurance under applicable state law. The bulletin advises that Title 37’s property and casualty laws do not require “wet” signatures, and producers and insurers are free to obtain electronic signatures. The bulletin further states “[t]o the extent that obtaining an electronic

signature is not practical considering the insurer's systems, the producer or insurer should document the need to obtain the signature and proceed to process the transaction." The Department indicated that it "will not take regulatory action in regard to this signature issue against any producer or insurer that follows this methodology." In addition, the Department [issued FAQs](#) concerning business interruption coverage and insurance.

As reported in Crowell & Moring LLP's [Insurers' COVID-19 Notepad for the week of March 23, 2020](#), the **New York** Department of Financial Services directed insurers to report on business interruption coverage for COVID-19 to the DFS and policyholders. The Department has now also [issued FAQs](#) addressing The Novel Coronavirus and Business Interruption Insurance.

The **Oregon** Division of Financial Regulation [issued a grace period order](#) requiring all insurance companies to extend grace periods for premium payments, postpone policy cancellations and nonrenewals, and extend deadlines for reporting claims. It also [issued FAQs](#) concerning COVID-19 and business insurance.

The **South Carolina** Department of Insurance [issued Bulletin Number 2020-02](#), which concerns Assistance for Insureds, Claimants and Covered Persons Directly Affected by COVID-19.

The **West Virginia** Insurance Commissioner [issued Emergency Order 20-EO-02](#) which provides that insurers must not issue a cancellation notice or nonrenewal notice pertaining to any insurance policy if the reason for cancellation or nonrenewal is a result of circumstances stemming from the COVID-19 pandemic and the corresponding State of Emergency, Executive Order 2-20, any subsequent executive orders or other governmental actions. [West Virginia Insurance Bulletin No. 20-07](#) provides further explanation of the order. In addition, the Insurance Commissioner [issued West Virginia Insurance Bulletin 20-08](#) addressing Business Interruption Coverage and Coronavirus (COVID-19).

State Governors' Action

Florida Governor Ron DeSantis [announced the deployment of the Business Damage Assessment survey](#), which will be utilized to assess the impact of COVID-19 on Florida's local business operations and determine appropriate relief programs. The initiative will be managed by the Florida Department of Economic Opportunity (DEO).

North Dakota Governor Doug Burgum entered [executive order 2020-12](#), which extended worker compensation coverage to first responders and health care providers who become infected with COVID-19 while on the job. The order retroactively applies coverage as of the day the governor declared a state of emergency, March 13, 2020.

State Legislative Action

Ohio legislators have introduced [H.B. Bill No. 589](#), which provides that policies of property insurance, which include loss of use and occupancy and business interruption, "shall be construed to include among the covered perils under that policy, coverage for business interruption due to global virus transmission or pandemic during

the state of emergency.” The proposed bill would only apply to policies issued to insureds that meet all of these criteria: (1) the insured is located in Ohio; (2) the insured employs 100 or fewer eligible employees; and (3) the insured was covered by an insurance policy described above that was in force on the effective date of this section.

On March 24, 2020, the Massachusetts legislature introduced [bill S.D. 2888](#). The bill mandates coverage “for business interruption directly or indirectly resulting from the global pandemic known as COVID-19.” The bill states that “no insurer in [Massachusetts] may deny a claim for the loss of use and occupancy and business interruption on account of (i) COVID-19 being a virus (even if the relevant insurance policy excludes losses resulting from viruses); or (ii) there being no physical damage to the property of the insured or to any other relevant property.” The act would apply to policyholders with 150 or fewer full-time employees in Massachusetts, and would provide a mechanism for an insurer providing such coverage to apply for reimbursement from funds collected from an assessment authorized under the act against all licensed companies in proportion to their net premiums written.

U.S. Congress

A [draft bill](#) outlining proposed legislation that would provide a go-forward mechanism for a federal backstop for pandemic risk insurance has been circulated, led by House Financial Services Committee Chairwoman Maxine Waters, (D-Calif.). It would create a reinsurance program similar to the Terrorism Risk Insurance act for pandemics, by capping the total insurance losses that insurance companies would face.

U.K. Activity

On March 17, 2020, Lloyd’s of London [requested](#) that its member firms provide estimates of the potential current and final losses from the coronavirus pandemic, seeking to obtain a better understanding of what exposure insurers could potential face as a result of COVID-19 based claims. Lloyds also closed its underwriting room, requiring market insurers to trade electronically.

The Association of British Insurers has stated that “the vast majority [of insureds] won’t have purchased extended cover,” which would respond to business interruption based losses arising from the coronavirus pandemic. [“Update: ABI Comment on business insurance & COVID-19.”](#)

On March 19, 2020, the U.K. Financial Conduct Authority (FCA) [issued a statement](#) on its expectations of insurers with regards to COVID-19 related issues. The FCA statement references several business lines (travel, medical, motor and home insurance) and instructs insurers considering product suspension, mid-term adjustments, and renewals at this time to carefully consider the needs of their customers and communicate any decisions and changes to an insured’s cover with the utmost transparency.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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