

New York Joins Growing Collection of States Considering Laws to Force Insurers to Pay COVID-19 Business Interruption Losses

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On Friday, March 27, 2020, New York joined the growing chorus of states that have introduced legislation requiring first-party property policies to insure business interruption losses due to COVID-19 – notwithstanding policy provisions requiring there to first be some physical damage and possibly despite widespread use of a “Virus” exclusion.

The New York State Assembly introduced a bill “requiring certain perils be covered under business interruption insurance during the coronavirus disease 2019 (COVID-19) pandemic.” Like a similar bill introduced in New Jersey (A-3844), the NY bill (A-10226), would require every property policy providing business interruption and loss of use coverage to include among the policy’s covered perils coverage for business interruption during the COVID-19 declared state emergency. Coverage required by the New York bill would include any loss of business or business interruption for the duration of the declared state of emergency, subject to the applicable policy limits.

As with the New Jersey bill, the New York bill applies to policies issued to insureds having less than 100 eligible employees. Also like the NJ bill, and unlike one being considered in Massachusetts (SD No. 2888), the New York bill does not expressly mention any “Virus” exclusion or a lack of physical damage to property. As we discussed in a prior alert, in 2006, ISO submitted, and state regulators approved, form CP 01 40 07 06, titled “Exclusion for Loss Due To Virus Or Bacteria” that bars first-party property coverage for loss or damage, including business interruption, caused by or resulting from any virus. By conspicuously omitting any mention of the “Virus” exclusion, of which the NY Legislature is certainly aware given widespread discussion of the “Virus” exclusion in recent weeks, one wonders whether the NY bill intends to override that exclusion.

Insurers obligated to make business interruption payments may seek reimbursement from a fund established by the New York Superintendent of Insurance that will be financed by a “special purpose apportionment” collected from all insurance companies writing in New York. The net effect, if passed, is that the bill could not only impose virus coverage on insurers that specifically excluded it, but also apparently on insurers that did not write first party business interruption coverage at all.

Presently, A-10226 has been referred to the Assembly Insurance Committee for further consideration. The bill is sponsored by Assemblyman Robert Carroll. If approved, the New York bill shall take effect immediately, and be retroactive to March 7, 2020.

If you have any questions or need additional information, contact Anthony Miscioscia (misciosciaa@whiteandwilliams.com; 215.864.6356), Felix Yelin (yelinf@whiteandwilliams.com; 215.864.6317), or a member of the Insurance Coverage and Bad Faith Group.

As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

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questions.