

DOES INSURANCE COVER COVID-19 RELATED LOSSES?

LEGAL ALERT

Does Insurance Cover COVID-19-Related Losses?

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Beginning on March 12, 2020, California has issued a series of statewide Stay at Home Orders to combat the COVID-19 pandemic. These Stay at Home Orders required many businesses to cease in-person services, resulting in substantial losses. The retail and restaurant industries have been particularly hard hit.

Many business owners may be wondering whether their insurance provides coverage for their losses under the Business Income and Civil Authority provisions in their policy. A series of recent case decisions in California suggests a ***lack of coverage for such losses, at least for now.***

What then, should business owners be doing when faced with a loss? As the old adage goes, “you can’t win if you don’t play.”

- A business should still consider submitting a claim to their insurers.

- Second, a business should collect all necessary information supporting the loss. This includes financial statements, inventory reports, payroll records, invoices, and receipts.
- Finally, reach out to an experienced insurance coverage attorney to review the policy. Not all policies are created the same, and it is possible there is language in the policy that could provide coverage for the loss.

Background

To be entitled to coverage under the Business Income and Civil Authority provisions of their policies, insureds must demonstrate a loss due to “direct physical loss of or damage to” property. In the recent California decisions *Mudpie, Inc. v. Travelers Casualty Insurance Co. of America*, — F. Supp. — (N. D. Cal. 2020) and *Pappy’s Barber Shops, Inc., et al. v. Farmers Group, Inc., et al.* 2020 WL 5500221 (S.D. Cal. Sept. 11, 2020) the courts, dismissing claims against the insurance companies, sided with the vast majority of out-of-state decisions that the inability to operate and occupy a business following government closure orders *does not* constitute a “direct physical loss.” For coverage to exist, there must be some outside *physical* force that induces a detrimental change to the property’s capabilities (e.g. a wildfire).

COVID-19 as a Physical Force

To date, there appears to be only one case in the United States, out of the Western District of Missouri, in which coverage for a COVID-19-related claim was secured. In *Studio 417, Inc. v. Cincinnati Insurance Co.*, No. 20-CV-03127-SRB, — F.Supp.3d — , 2020 WL 4692385 (W.D. Mo. Aug. 12, 2020), a hair salon and several restaurants sought coverage for losses incurred when their businesses were impacted by the COVID-19 pandemic. The difference in that case, however, is that while these businesses alleged that their properties were actually infected with COVID-19. Thus, the court found that the presence of COVID-19 constituted a *physical force* that caused the businesses to close.

AB 1552

Although courts in California have determined that coverage does not exist for losses resulting from government closure orders due to COVID-19, at least one court decision, *Mudpie, Inc. v. Travelers Casualty Insurance Co. of America*, has recognized that the law concerning business interruption coverage linked to the COVID-19 pandemic is “very much in the development.” Indeed, multiple state governments have proposed legislation which would retroactively provide coverage. In California, amended Assembly Bill 1552 was referred to the California Senate Insurance Committee in July 2020. AB 1552 would have made it easier for insured’s to demonstrate proof in a case seeking coverage for business interruption. Specifically, AB 1552 would have created a presumption that:

- COVID-19 was present on specified property and caused physical damage; and
- With respect to an order of civil authority, that COVID-19 was present on property located within the geographical location covered by the order and caused physical damage to that property.

Unfortunately for business owners, AB 1552 has since died in committee, and it is unclear when and/or if future legislation may be put forward or enacted that would provide relief to businesses.

What then, should business owners be doing when faced with a loss? While the reality is that there is unlikely to be coverage for these claim unless (and until) legislation like AB 1552 is passed, a business should still consider submitting a claim to its insurer. Second, collect all necessary information supporting your loss. This includes financial statements, inventory reports, payroll records, invoices, and receipt. Finally, reach out to an experienced insurance coverage attorney to review your policy. Remember, not all policies are created the same, and it is possible there is language in your policy that could provide coverage for your loss.

If you have questions regarding insurance coverage for losses resulting from COVID-19, please reach out to **Daniel J. Marsh**.

Meet Our Trusted Advisor



Daniel J. Marsh is an experienced litigator. He assists clients with all types of business and real estate litigation matters, including complex corporate and partnership disputes, contract disputes, property damage claims, and professional liability matters. In addition, he has specific expertise in business insurance coverage and insurance bad faith litigation.

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