

Publications

First COVID-19 Business Insurance Coverage Case Filed in Louisiana

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As state and local governments declare public health emergencies and issue stay at home orders due to the threat of the coronavirus (COVID-19), businesses impacted by the unprecedented decline in economic activity are looking to stem their losses and survive until the threat passes. In addition to government loans and emergency funds, business owners may look to their insurance carrier to provide coverage for their losses and may decide to bring suit should their insurer deny coverage.

The first, in what will undoubtedly be many coverage cases, was filed on March 16th in New Orleans, Louisiana civil district court. In *Cajun Conti LLC, et al. v. Certain Underwriters at Lloyd's, London, et al.*, the plaintiff, a restaurant owner and operator, sought a declaration of coverage under an all-risks property policy that covers direct physical losses unless specifically excluded or limited in the policy. The plaintiff argues that the coronavirus causes physical damage and loss because it “physically infects and stays on the surface of objects or materials” for an extended period of time. This contamination of the insured premises, according to the plaintiff, is a direct physical loss requiring remediation that is covered by the policy.

Furthermore, the plaintiff sought a declaration that its operating losses are covered by the policy’s business interruption coverage. The plaintiff alleges that in response to the spread of the coronavirus Louisiana’s Governor and the Mayor of New Orleans have issued orders restricting restaurant operations, thus impacting the plaintiff’s business income. The plaintiff contends that such orders and restrictions on operations trigger the policy’s civil authority coverage for business income losses.

No response has been filed yet, and the case is still in its early stages. However it surely will not be the last such case filed, and it sets the stage for litigation on these issues across the country. Whether the coronavirus in fact constitutes a direct physical loss may hinge on the still-developing science regarding how long it persists on surfaces and in the air, setting up a battle of the experts. Even if the coronavirus has a relatively short lifespan on surfaces, policyholders could argue the risk of re-contamination or the loss of functionality of the premises

constitutes a physical loss. And if policyholders are correct that the coronavirus causes physical damage or loss to the property, policyholders and the insured likely will then turn to the question of whether the coronavirus constitutes a pollutant for purposes of a pollution exclusion.

Both policyholders and insurers need to carefully examine these issues and the language of their policies, and be prepared for similar claims and cases. Vorys is actively monitoring this and other coronavirus-related insurance and litigation issues as they occur. If you have any questions about the coronavirus, COVID-19, and their impact on your organization, please contact the Vorys COVID-19 insurance task force, Tom Szykowny, Anthony Spina, Alycia Broz, Joseph Brunner, or your regular Vorys attorney.

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Vorys COVID-19 Task Force

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. We have also established a comprehensive COVID-19 Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at [vorys.com/coronavirus](https://www.vorys.com/coronavirus).