

NY Bill Proposes Coverage for Business Interruption Claims Due to COVID-19

New York has now joined Ohio, Massachusetts, and New Jersey in introducing a bill that would require insurers to retroactively cover business interruption claims due to COVID-19. Under the bill, if passed, insurers would cover claims for “business interruption during a period of a declared state emergency due to the coronavirus disease 2019 (COVID-19) pandemic.” More specifically, the proposed bill states as follows:

“Notwithstanding any provisions of law, rule or regulation to the contrary, every policy of insurance insuring against loss or damage to property, which includes the loss of use and occupancy and business interruption, shall be construed to include among the covered perils under that policy, coverage for business interruption during a period of a declared state of emergency due to the coronavirus disease 2019 (COVID-19) pandemic.”

Insurers would be required to provide coverage “subject to the limits under the policy, for any loss of business or business interruption for the duration of a period of a declared state emergency” due to COVID-pandemic.

Under many commercial property policies, viruses, pandemics and contagious/infectious diseases such as COVID-19 are often excluded perils. These policies also require direct physical loss to property in order to trigger coverage.

The New York bill would apply to policies in force by March 7, 2020 and issued to businesses with fewer than 100 full-time employees.

Pursuant to the bill, insurers paying business interruption claims can seek reimbursement from the New York Superintendent of Insurance. This would be funded by a “special purpose apportionment” the New York Superintendent of Insurance would be authorized to collect from all insurers doing business in the state.

When asked about the proposed legislature, the National Association of Mutual Insurers (“NAMIC”) stated that “retroactively requiring contractual changes for which no premium was collected is a dangerous, unprecedented and unconstitutional proposal that NAMIC emphatically opposes.”

Forcing insurers to provide retroactive business interruption coverage could also impact the financial stability of the sector.

Stay safe!

KD’s Insurance Coverage & Litigation Practice Group is continuing to monitor the evolving laws and regulations governing insurance and litigation matters in the wake of the Coronavirus pandemic. It is always a good idea to check your state’s laws as well, since they, too, are changing almost daily in response to this global crisis.

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