

FHMS COVID-19 Resource Center:

PA SENATE PROPOSES SECOND BILL ON BUSINESS INTERRUPTION COVERAGE

To address the growing clamor for insurers to pay business interruption claims arising out of the COVID-19 pandemic, the Pennsylvania Senate has introduced two bills. FHMS previously [reported](#) on the first bill, SB 1114, which proposes that insurers pay business interruption claims regardless of coverage under their policies.

[SB 1127: COVID-19 Property and Business Interruption Insurance Act](#)

SB 1127 was introduced in the Pennsylvania Senate on April 30, 2020. Rather than mandating coverage regardless insurance policy language, SB 1127 would establish rules of contract interpretation applicable to business interruption coverage that could result in coverage for COVID-19 related business interruption claims. Section 7 of the Bill provides:

“If a person positively identified as having been infected with COVID-19 has been present in, or if the presence of the COVID-19 coronavirus has otherwise been detected in, a building, an office, a retail space, a structure, a plant, a facility, a commercial establishment or other area of business activity, **that area of business activity shall be deemed to have experienced property damage.**” (emphasis added).

Notably, “property damage” is defined as “direct physical loss.” Section 9 provides that Governor Wolf’s March 19, 2020 shutdown order constitutes an Order of Civil Authority for purposes of triggering coverage under the civil authority provisions of business interruption coverage. Under Section 11, the “loss of market” exclusion and “similar exclusions” are deemed to not apply to claims for coronavirus-related business income claims. The Bill would apply to insurance policies with an effective date on or before March 6, 2020.

If passed, the Bill would vest the Pennsylvania Supreme Court with exclusive jurisdiction to hear challenges to the law. Section 15 provides that the rules of construction in the Bill do not apply if the application of a rule results in an interpretation that is contrary to the mutual intent of the policyholder and insurer, as clearly and expressly communicated during the period of negotiating for, and agreeing to, the terms of the insurance policy at issue.

Absent from the Bill is any provision addressing the applicability of the “Exclusion of Loss Due to Virus or Bacteria” endorsement. Such an exclusion appears to differ from the “loss of market exclusion” referred to above. This standard Insurance Services Office form is a part of many commercial property policies and excludes coverage “for loss or damage caused by or resulting from any virus . . . that induces or is capable of inducing physical distress, illness or disease.” On its face, this exclusion would seemingly preclude coverage for COVID-19, a disease caused by a virus.

The question becomes whether the existence of the exclusion constitutes a clear and express communication of mutual intent between policyholder and insurer “*during the period of negotiating for, and agreeing to, the terms of the insurance policy that is the subject of the policyholder’s claim for coverage for COVID-19-related losses.*” It has generally been understood by the industry that a standard commercial property policy does not provide coverage for business interruption resulting from a pandemic. The insurance industry has developed [products](#) specifically intended to cover business loss arising from pandemics.

While it remains to be seen whether any of these bills will become law, any such law could be subject to constitutional challenges. As always, we are available to discuss your questions or concerns. Please do not hesitate to contact us.

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