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You've Been Ordered to Close Your Business to Prevent the Spread of the COVID-19 Virus. Could that be Covered by Your Insurance?

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by Edward P. McCreery

Matters related to the COVID-19 outbreak that can prevent you from accessing your place of business could come in several scenarios. You might be one of the establishments, such as gyms, restaurants or movie theatres, which have been ordered closed or restricted by Executive Order from the Governor's Office pursuant to his Emergency Powers. Or you might receive a directive from a health official that you must close due to an internal outbreak clustered amongst your employees. Finally, your landlord may order you to close your business temporarily due to the outbreak.

Could such directives possibly be covered by your business property insurance policy's various forms of business interruption coverage? The answer is it depends upon your policy language. Impairing the chance of coverage are changes many insurers made after the SARS outbreak. In addition to broad exclusions recently added to exclude coverage for pollution and mold, many commercial insurers added exclusions for any claims arising "directly or indirectly" out of the spread of pathogens, biological materials, or microbes, with the later defined to include "viruses." Such a broad exclusion would potentially preclude coverage for the above scenarios.

If your policy does not contain such a broad exclusion, then you must still determine whether your business interruption coverage is tied to a requirement that the claim must be associated with physical damage to your property or property in the surrounding area. Such provisions were meant to cover situations such as a hurricane or tornado which forces the closure of part of the city. As another example, they would also cover your being physically blocked from

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accessing your building by an accident that then precludes returning while damaged gas lines are repaired. If a requirement for physical damage is included in your policy, it may not cover a COVID-19 closure.

Without a physical damage requirement and without a virus spread exclusion, or if you had the foresight to procure a rider extending your coverage to the spread of pathogens, there is a chance you might have coverage. Finally, if there is a chance you might be ordered closed by your landlord, you also need to have your counsel review the provisions of your lease agreement.

This is an ever evolving situation including some states considering legislation to try and mandate that interruption coverage be provided. If you desire a review of your insurance policy or lease provisions and what they do or do not cover in connection with the current situation, contact Edward McCreery at Pullman & Comley, LLC.

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