

JOHNSON & BELL

March 26, 2020

We here at Johnson & Bell, Ltd. hope that this message finds you well amid the current COVID-19 pandemic. During this period of uncertainty, we understand many of our clients have questions related to insurance driven by the various lockdowns across the country which have necessitated massive business closures. The effects of COVID-19 upon our clients are at the forefront of our minds. The insurance coverage issues arising from the pandemic will be with us long after the virus has subsided. Against this background, we want to provide you with a brief overview of insurance coverage issues that may arise out of policyholder business interruption claims in connection with the pandemic.

The majority of business owner's policies cover losses of business income caused by direct physical damage to covered property. Related to business income coverage, these policies often insure against losses caused by "civil authority" that prevent the insured from operating its business.

In context of the current pandemic, one key question that will arise is whether contamination of business property by the coronavirus constitutes "physical damage to property". A policyholder would likely need to show that the virus was on the premises and caused damage to the premises. Policyholders will likely argue that contamination of business property occurred where one of its employees has become sickened by the virus, or possibly if an outbreak of the virus could be connected to a large amount of people visiting the business and then contracting the virus.

Even if a business can demonstrate that its business property was contaminated by the virus, many insurance policies contain a bacteria/virus exclusion which precludes coverage for losses caused by a contagion. Other insurance policies may also include exclusions for epidemics or pandemics, or for *force majeure* events that could arguably be applicable. We understand that some state legislatures and members of congress are considering legislation that would remove the virus exclusion from insurance policies in order to cover losses caused by the pandemic. Critics of such legislation are challenging the constitutionality of such a measure as being violative of the Constitution's contract clause. Some legislators are proposing that the federal government underwrite the business interruption losses and indemnify the insurance carriers who will manage the claims.

The insurance coverage issues surrounding the current COVID-19 pandemic are fluid and the situation is rapidly evolving. Johnson & Bell will continue to monitor all developments in this regard and is committed to the quality representation of our clients.

If you have any questions about the applicability of your insurance coverage to the current crisis, please feel free to contact [Glenn Fencel](#), [Peter Ryndak](#) or [David Rock](#) at any time.