



## INSURANCE LAW UPDATE ON COVID-19: PART II

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By **Erica Baumgras**

Flaherty will continue to follow developments at both the national and state level, whether in the legislative, administrative, or judicial arena.

Please reach out if you have any questions about how these developments may impact you, your business, or your employees.

On March 22, a bipartisan group from the United States House of Representatives sent a letter to four (4) insurance industry trade organizations, asking insurers to provide business interruption coverage under existing commercial property policies for losses due to closures tied to COVID-19. The lawmakers asserted that the coronavirus pandemic fulfills the policies' requirement that an interruption in business is attributable to a "direct physical loss" or damage to property. They also asserted that state and local "shelter-in-place" and curfew orders should trigger coverage for losses under the "civil authority" prong that is often found in commercial property policies.

In response, executives of the four groups, the American Property Casualty Insurance Association, National Association of Mutual Insurance Companies, Independent Insurance Agents, and Brokers of America, and Council of Insurance Agents and Brokers, sent a joint letter to Rep. Nydia Velazquez, D-N.Y., saying that business interruption policies "do not, and were not designed to, provide coverage against communicable diseases such as COVID-19." The groups said that the "U.S. insurance industry remains committed to our consumers and will ensure that prompt payments are made in instances where coverage exists." The trade groups added that their member companies have assisted in local charitable relief efforts and have begun to work with customers "on issues such as flexibility in premium payments." The groups also said the "U.S. is in the midst of a national crisis that will require federal assistance that provides funding directly to those American individuals and businesses most in need," and that their "organizations stand ready to work with Congress on solutions that provide the necessary relief as soon as

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possible."

Also, at the national level, a subcommittee of the House Committee on Oversight and Reform on Wednesday asked three (3) travel insurance carriers to produce documents and participate in interviews to address the scope of coverage provided by their policies for trip cancellations related to the coronavirus. The chairman of the Economic and Consumer Policy subcommittee sent letters to Allianz Global Assistance USA, Generali Global Assistance Inc., and Travel Guard Group Inc., asking them to provide certain information by March 25. Among other things, the subcommittee is seeking data on the number of claims the carriers have received from policyholders for reimbursement of trip cancellations or medical expenses, as well as how many of those claims have been paid or denied. Rep. Raja Krishnamoorthi, D-Ill., also asked executives of the three insurers to schedule interviews, noting that the subcommittee "can make arrangements for a remote interview." The executives previously declined invitations to testify at a subcommittee hearing on travel insurance issues scheduled for March 11. The inquiries are part of an ongoing investigation into consumer complaints that their travel insurance claims have been improperly denied.

The three insurers have all issued public statements indicating they now consider the coronavirus outbreak to be a "foreseeable event" and that cancellations for fear of travel generally will not be covered under most of their policies. The carriers have said their "cancel for any reason" policies might provide partial or full coverage for cancellations on these grounds, depending on the policies' terms. In addition, the insurers have all indicated that some of their policies might cover claims for trip cancellation or interruption if a policyholder's plans are disrupted by a confirmed diagnosis of COVID-19.

At the state level, in the New Jersey General Assembly, lawmakers are in discussions with insurance carriers regarding potential changes to a bill, A3844, that would retroactively expand business interruption insurance to include losses attributed to the coronavirus pandemic. The bill was reported out of the General Assembly's Homeland Security and State Preparedness Committee last Monday. It was set for a vote by the full chamber the same day before the sponsors pulled it at the last second. Assemblyman Freiman's chief of staff reported that the bill was pulled so lawmakers could engage in further discussions with insurers. After several conversations with various insurance companies, they concluded that they are going to allow companies to come forward with their plans to address the issue proactively, and they want to give them a few days to do so. As of March 20, talks were still ongoing.

As currently written, A3844 would apply to business interruption policies held by New Jersey businesses with fewer than 100 full-time employees, provided that the policies were issued by March 9, when Gov. Phil Murphy declared a state of emergency. The bill would effectively rewrite such policies to explicitly include coverage for "business interruption due to global virus transmission or pandemic." Insurers that pay business interruption claims under these policies would potentially be eligible for reimbursement from the New Jersey Department of Banking and Insurance, according to as-yet-undetermined standards that would have to be established by the department.

A3844 was met with swift criticism by a host of both New Jersey and national insurance industry trade groups, which cautioned against legislation that would retroactively create coverage for otherwise uncovered losses. Those concerns were echoed by attorneys who represent insurers, who pointed out that many policies with business interruption coverage contain a "virus" exclusion that was developed by the Insurance Services Office and approved by state regulators years ago. If passed in its current form, the bill could be met with numerous constitutional challenges by insurers.

Citing the coronavirus outbreak, the California Insurance Commissioner issued a notice on March 19 requesting that all insurance carriers doing business in the state grant their policyholders a "grace period" of at least 60 days before canceling their policies due to a failure to pay premiums. During that period, policyholders would be able to catch up on payments. Commissioner Lara said he issued the notice, which applies to insurers offering life, health, auto, property, casualty, and other types of coverage, to ensure policies are not canceled for nonpayment of premium due to the novel coronavirus (COVID-19) public health emergency. Lara further requested that all insurance agents, brokers, and others who accept premium payments on behalf of insurers take steps to ensure that customers have the means to make payments if and where possible, including alternate methods of payment, such as online payments, to eliminate the need for in-person payment methods in order to protect the health and safety of both workers and customers.