Litigation Alert: COVID-19 and an Interruption to Your Business Operations Due to Mandated Shutdowns: Is Your Business Protected?

How is your business protected if there is a shutdown due to a state of emergency, government restrictions, or a shutdown because an employee has tested positive for the COVID-19 virus?

Your commercial property insurance policy likely includes business interruption coverage for losses if your business has to abruptly shut down. Some policies also include "contingent" coverage for losses resulting from the closure of a supplier. Whether your insurance policy covers an interruption to your business depends upon the policy's language. Business interruption (a/k/a business income loss) coverage is included in the property section of a commercial policy or a standalone policy.

This coverage is triggered when there is "direct physical loss" to your business' property, which compels a closure. Many businesses have closed, or will, in response to the COVID-19 pandemic. The closures may be based on risk assessment and similar concerns by owners/management, an infected employee, or an employee having contact with a person known to or suspected of having COVID-19. There could also be a landlord-directed closure based on the presence of a person with COVID-19 in another tenant's space or a government-directed shutdown.

If your business closes due to COVID-19 concerns, but your building remains habitable, the direct physical loss requirement will not be met. However, if your building is physically contaminated, for example, following the presence of an infected person, those circumstances may trigger coverage.

Since 2006, many commercial property policies exclude "loss or damage caused by or resulting from a virus… that induces or is capable of inducing physical distress, illness or disease." In New Jersey, the Legislature is taking up a bill, A-3844 which, if enacted, would bar the enforceability of such exclusions for businesses with less than 100 employees.

Your policy needs to be carefully reviewed to determine coverage definitions, limitations, conditions and exclusions. We are available to assist in a review of your insurance policies to ensure your company is protected to the extent of the policy's coverage. Contact Stuart Polkowitz at spolkowitz@bracheichler.com or 973-403-3152 for further review of your insurance policy to determine whether your policy covers your business for its income loss in the event of a COVID-19-related closure.