

MSF CLIENT ALERT

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Business Interruption Claims – Legislators Taking Action

Insurance companies have rejected the business interruption claims they have received related to the COVID-19 pandemic on the basis that the claims are not covered claims. In the face of this position being taken by insurance companies, several states are taking action.

Over the past few weeks, lawmakers in New Jersey, Massachusetts and Ohio have introduced bills that are intended to require insurance companies to cover business interruption claims that result from the COVID-19 pandemic. Now, the State of New York has joined the list of states looking to protect its resident businesses.

On March 27, 2020, New York Assembly members Robert Carroll and Patricia Fahy introduced bill A. 10226, which states in part:

“Notwithstanding any provisions of law, rule or regulation to the contrary, every policy of insurance insuring against loss or damage to property, which includes the loss of use and occupancy and business interruption, shall be construed to include among the covered perils under that policy, coverage for business interruption during a period of a declared state of emergency due to the coronavirus disease 2019 (COVID-19) pandemic.”

The impact of this bill, if passed, is that insurers would be required to cover business interruption claims resulting from the COVID-19 pandemic and its impact on the claimant’s business.

Note that the bill:

- is retroactive, covering all insurance policies that were in place on March 7, 2020, which is the date that New York’s Governor Cuomo announced a state of emergency;
- applies to the applicable insurance policies that were held by businesses with fewer than 100 “eligible employees,” which is defined as full-time employees who work at least 25 hours per week; and
- limits claim amount and coverage to the limits under the policy.

Note that the bill also provides the ability for affected insurance companies that are required to pay COVID-19 claims to seek reimbursement from the New York Superintendent of Insurance.

The bill is currently under review and discussion. We will supplement this alert once any action has been taken.

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