

# MSF CLIENT ALERT

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## MSF Forms COVID-19 Insurance Recovery Team

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*As the COVID-19 crisis deepens, businesses are exploring whether they have any insurance available to cover their losses. In response, MSF has formed a COVID-19 Insurance Recovery Team to assist clients in seeking coverage, counseling clients on the potential availability of coverage, and litigating on behalf of clients whose carriers have denied coverage.*

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The questions of whether and how much coverage an insurer is obligated to provide on COVID-19 claims will be addressed by both courts and legislatures in the coming months. Nevertheless, several things are already clear. Businesses need to consider each of their various policies when seeking coverage, including those that cover property damage, loss of business income and expenses, event cancellation, general liability, workers compensation, errors and omissions, and acts taken by directors and officers. Each of these policies, may, given the circumstances and policy wording, provide coverage. The policies must be reviewed carefully to determine the existence and scope of available coverage.

For example, if an insured can demonstrate it was forced to close its business because of a government order, it may be entitled to recover its loss of business income and certain associated expenses for a period of time under a provision in a policy referred to as “civil authority” coverage.

Even without a government order, coverage may be available under property insurance policies if insureds can demonstrate the physical presence of the COVID-19 virus at their businesses. Coverage for loss of business income may be available even if businesses suffer losses because the COVID-19 crisis disrupted the operations of

suppliers and distributors. This is known as contingent business interruption coverage.

If an insured is sued as a result of events arising out of the COVID-19 crisis, the insured, depending on the facts, may have recourse under its general liability, errors and omissions, directors and officers, cyber, or, even, workers compensation policies.

Insurance policies always have exclusions and coverage limits that should be considered. Some property insurance policies have exclusions for viruses, communicable diseases, and contamination. A number of state legislatures, however, presently have bills pending that would require COVID-19 coverage notwithstanding otherwise problematic exclusions. So far, none of these bills have become law.

Courts, for their part, have usually interpreted insurance policy exclusions narrowly and thus may rule that coverage is available despite the presence of certain exclusions. Some policies are “named peril” policies, covering only the risks the policies name, while others are “all risk” covering everything except that which the policy specifically excludes.

The amount an insured can recover from its carrier is limited by the monetary coverage limits and policies also

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may limit coverage to certain time periods. Policyholders must be mindful of these time periods, which are often referred to as “periods of restoration” in policies covering loss of business income. Similarly, many policies, such as event cancellation policies, often require the insured to mitigate its losses. Insureds must also be mindful of the notice requirements in their policies, some of which are surprisingly short.

So, what should an insured do? Three immediate steps are crucial. Insureds should:

- notify their carriers of the claim as promptly as possible;
- attempt to mitigate their losses; and
- make and keep records of the events and the amount of the losses.

Taking these three steps will put insureds in the best position to recover on an insurance policy if coverage is available.

The MSF COVID-19 Insurance Recovery Team is ready to assist clients in all aspects of protecting policy-holders rights, from reviewing and analyzing policies, filing claims with insurers and litigating in the event an insurer denies a valid claim for coverage.

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## Let us know how we can help.



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