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BUSINESS INTERRUPTION INSURANCE AND COVID-19

Groundhog Day. It's how NYS Governor Andrew Cuomo described the "bizarre reality" of the Coronavirus pandemic which has forced most New York businesses to close or limit hours to minimize the spread of the disease in today's briefing. For business owners experiencing the pain of trying to meet their financial obligations during these uncertain times, each day that they are unable to resume normal business activity likely feels like part of an unending nightmare. As they scramble to find ways to counteract the COVID-19 economic fallout, many of them are turning to the Federal government for aid under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") in the form of low interest loans under the Economic Injury Disaster Loan ("EIDL") and Paycheck Protection Program ("PPP"). In addition to applying for loans, however, businesses should be taking stock of their insurance coverage and making sure that they keep track of all information that might be required should they seek to make a claim under an insurance policy.

A number of commercial insurance policies include business interruption coverage as part of the policy. Business interruption insurance may provide businesses with coverage for lost revenue if a business is required to temporarily close. It may also cover rent or lease payments for a temporary business location and the attendant costs of relocation. Like the EIDL and PPP, it may also provide coverage for payroll, taxes and loan payments. Business interruption insurance often does not cover property damage, additional expenses or closures caused by the loss of a supplier, partner or customer. Whether a loss is a covered loss is likely dependent upon the closure being a result of an event which is covered under the business' commercial property insurance or business owner's policy.

INSURANCE POLICY LETTERS

Last month, the NYS Department of Financial Services ("DFS") directed insurers to provide policyholders with a "clear and concise" explanation of benefits" setting forth the type of

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policy owned and expressly stating whether the policy provides coverage for business interruption and if so the types of loss sufficient for coverage under the policy. In particular, DFS directed insurers to indicate whether the policy contains a requirement for “**physical damage or loss**” and whether a loss in connection with a pandemic, including those sustained by reason of a “**civil authority order**,” may constitute a “physical damage or loss”. These terms can involve complex definitions within the policy.

POTENTIAL LEGISLATION

On March 27, 2020, NYS lawmakers introduced a bill that would force insurers to retroactively cover business interruption claims due to COVID-19. Although this bill may provide hope to businesses whose losses are not currently covered under their insurance policies, it is by no means a guarantee.

WHAT A BUSINESS SHOULD DO

Businesses which are still evaluating their losses or believe that they may suffer a loss as a future loss as a result of this pandemic may wish to:

- Gather and review their policy;
- If they don't have a complete policy, request one from their agent;
- Review the policy and comply with any notice requirements, including potentially providing a notice of claim or potential claim, or a “notice of circumstance” of an anticipated claim, if applicable, to preserve coverage under an existing policy;
- It is important that businesses meticulously document and preserve all information related to the impact that COVID-19 is having on their business. Profit and Loss statements, business and sales tax returns and sales, inventory and cost accounting records are just some of the documents that an insurer may want to review. Incomplete or insufficient records may affect coverage.

If you would like a review of your business' insurance coverage and more information on the steps you should be taking to preserve a claim, please call or email us.