California Bill to Enhance Insurance Coverage for Business Interruption Losses will Provide Financial Relief to Companies Impacted by COVID-19

Aug 10, 2020

Categories:

Coronavirus Response Team

Publications

Authors:

Monisha Coelho

Business Interruption Insurance policies cover financial losses resulting from interruptions to a business's day-to-day operations due to certain factors. Most business interruption policies require there to be a direct physical loss to the company or physical damage to property to trigger insurance coverage.

During Covid-19, insurance companies have been denying coverage for business interruption losses on grounds the virus caused no "physical damage," and hence the insured was not entitled to benefits under the policy. The California Legislature is working on Assembly Bill 1552 ("Bill") that would create rebuttable presumptions that Covid-19 did cause "physical damage" such that business interruption losses due to the pandemic will now be covered under such policies. This Bill, amended in June 2020, is intended to protect the solvency of businesses forced to close their doors or limit business due to the coronavirus disease.

Specifically, for commercial insurance policies that provide coverage for business interruption, the Bill will permit three presumptions where the insured states the business interruption was due to Covid-19 and occurred during the state of emergency declared by the Governor. The insurance carrier would have the burden of rebutting these presumptions if it wants to deny coverage. The rebuttable presumptions are as follows:

- A rebuttable presumption that Covid-19 was present on the insured's property and caused physical damage to that property which was the direct cause of the business interruption.
- A rebuttable presumption that Covid-19 was present on property located within the geographical location covered by

the order of the civil authority (federal, state, local government, and their agencies) and caused physical damage to that property, which was the direct cause of the insured's business interruption.

- A rebuttable presumption that Covid-19 was present on the property of a third party and caused physical damage to that property, which was the direct cause that prevented the ingress and egress to the insured's property and resulted in the insured's business interruption.

Further, the Bill prohibits the Covid-19 virus from being construed as a pollutant or contaminant for any exclusion within a commercial insurance policy, unless viruses are expressly included in that exclusion policy language. The Bill does not affect any insurance policy language addressing loss or damage caused by a virus.

If passed, the benefits of this Bill would apply retroactively to all commercial insurance policies that provide coverage for business interruptions that were in full force and effect on and after March 4, 2020, the date the Governor declared a state of emergency related to the Covid-19 pandemic.

Monisha Coelho represents clients – from startups to multinational corporations – resolve business and real estate disputes in state and federal court litigation. She has particular expertise handling a wide range of real estate issues involving landlords, traditional and hard money lenders, and developers. She is licensed to practice law in India and advises clients on cross-border US-India business transactions and litigation.

DISCLAIMER: The information contained herein is intended for informational purposes only and should not be construed as professional counsel or legal advice. Seek legal counsel for advice with respect to any legal matter. The information in this document may not reflect the most current developments as the subject matter is extremely fluid and may change daily. The content and interpretation of the issues addressed herein are subject to change.