NIESAR & VESTAL LLP
Law Alert
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Reviewing business interruption insurance policies in the coronavirus context

We have had several conversations with our clients discussing whether or not their insurance policies cover business interruptions caused by viral pandemics and any resulting shutdowns imposed by civil authorities.

The majority of insurance policies forwarded by our clients are property insurance policies. Business income is generally part of a property policy that would cover an insured for loss of income resulting from a "covered loss."

Generally, policies require that in order for a claim to be paid, physical damage must be done to the insured property. The policy usually relates to real estate owned or leased by the business that purchased the property and in which it conducts its business activities. Thus, the trigger for any property insurance policy and resulting time element coverage is physical damage to insured property by an insured peril. Insurers argue that the introduction of a virus does not constitute direct physical loss or damage to insured property nor is it a covered peril. Moreover, most property policies expressly state that they do not cover a loss resulting from a virus. Thomas Keller, owner of the French Laundry, has filed a lawsuit challenging the "property loss defense" of the insurance company. He apparently claimed that the food in the restaurant was contaminated, or at least unusable because of potential contamination, so that was a "property loss" that would invoke the lost income coverage portion of his policy. The newspaper report of the lawsuit noted that he had a high premium policy that did not include an exclusion for losses resulting from a virus.

Some insurers widened the protection to provide coverage as a result of a closure of the business by a public authority for a number of risks including infectious disease.

Businesses are trying different arguments in an attempt to get their claims accepted. Coverage will depend on the specific language in the insurance policy. Every policy is different and should be read carefully before coming to a conclusion.

Finally, one can surmise that a business that could receive a forgivable loan funder the Payroll Protection Program (PPP) may encounter a defense with the insurance company contending that no "loss" was experienced since the lost income was recouped in the interest free loan. If the business did not apply for a PPP loan, then it might be subject to a defense of failure to mitigate damages.

If you have any questions related to your insurance policy, please feel free to contact Gerald Niesar (gniesar@nvlawllp.com) or Carolina Aricu (caricu@nvlawllp.com).