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March 20, 2020

Dear Member:

Re: Insurance Coverage for the COVID-19 Virus

We hope you, your families and staff are well and safe. These are indeed historic, challenging and extraordinary times. We have been hard at work considering the insurance implications of the pandemic.

Many of you are already receiving calls from restaurants, hotels and other businesses that have been ordered to close. The losses will be enormous.

## **Business Interruption, Extended Coverage, Extra Expense and Civil Authority**

In these times our clients seek advice as to coverage for Business Interruption, Extra Expense, Egress and Ingress coverage and Civil Authority claims. The only way to properly assess coverage is to read each policy.

The analysis of a typical Business Interruption claim generally starts with: (1) Did a covered peril (2) cause direct physical damage or physical loss (3) to insured property or property at the described location or within a specified distance (4) during the policy period (5) resulting in an actual loss of business income (6) due to the necessary suspension of the insured's operations.

With Covid-19, the direct physical damage or loss to the insured property will be physical contamination of property due to the virus's propensity to attach to surfaces and remain dangerous for a long period of time.

Where an insured has evidence of direct contamination of its property pursuing such claims is straightforward. Most cases for which we are being consulted is where the insured will not have evidence of damage by exposure of COVID-19 to its property. In those situations, the policy's Civil Authority provision may be the best option to look to for coverage. As well, consider the policy's coverage for Business Income arising from claims involving Dependent Properties.

Typical Civil Authority policy language reads:

We will pay for the actual loss of "business income" you sustain and necessary Extra Expense caused by order of civil authority that prohibits access to the "described premises" due to direct physical loss of or damage to property, other than at the "described premises," caused by or resulting from any Covered Cause of Loss.

Considering that our elected officials have ordered the shut-down of restaurants, bars, etc. due to the Covid-19 virus, and due to its viability on property surfaces which facilitates its spread, claims under the Civil Authority policy coverage may be availing.

It is important while reading through the policies to carefully examine the policy's exclusions. Policies often include an exclusion for all losses arising directly, indirectly, or contributed to in any way from viruses. Such exclusion would likely defeat claims for coverage notwithstanding coverage for losses arising from Civil Authority orders. Many policies do not have this language.

In New Jersey, NJPAA is supporting Bill #A3844 (copy attached) reported out of the Assembly Homeland Security Committee and would interpret every Business Interruptions policy as providing coverage for the COVID-19 virus.

While there are limiting details, it would be an enormous boon to commercial insureds in the state. Call your New Jersey Assemblyman and Senator and demand passage.

At the urging of our partner, Jon Houghtaling, on March 16<sup>th</sup> Mayor DeBlasio of New York City issued an Executive Order adopting our proposed language relating to the closure orders to "property damage" caused by the virus' contamination of surfaces. This language will be extremely helpful for policies without a virus exclusion.

As to New York State, We have been in touch with Governor Cuomo's office seeking to sensitize the administration about clarifying in the Executive Order that closures are due both to the risk of person-to-person transfer, as well as the property damage caused by the virus. We are encouraging Governor Cuomo to include "property damage" due to the virus as a basis for his orders in addition to the risk of personal transmission.

As you learn of businesses with extensive lost earnings that are provable based upon reliable books and records, please obtain the full policy and read it.

These claims are likely to be aggressively resisted by the insurance industry, early involvement of counsel is critical. Call or email David Karel (212-285-0510; [dbkarel@wfkclaw.com](mailto:dbkarel@wfkclaw.com)) or the

undersigned (212-285-0510; [jon@wfkclaw.com](mailto:jon@wfkclaw.com)) and please copy the undersigned's assistant Denise at [denise@wfkclaw.com](mailto:denise@wfkclaw.com) with questions or potential issues to discuss.

We attach the Mayor's order and interesting reading materials from FC&S discussing these issues. We suggest you read them carefully. Be safe and stay in touch.

Very Truly Yours,

By:   
JONATHAN WILKOFSKY  
Executive Director and General Counsel