

Businesses Seek Coverage for Lost Income Due to Governmental Shutdown Orders

By John C. Morrow

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We are beginning to see complaints filed by business owners seeking insurance coverage under commercial all-risk insurance policies for loss of business income resulting from state governmental shut-down orders imposed in the wake of COVID-19. Typically, an all-risk policy requires direct physical loss of or damage to covered property in order to invoke coverage. Businesses, such as restaurants and retailers directly affected by shut down orders, have filed declaratory judgment actions in Alabama alleging that the shutdown orders themselves deprive the business of the value, use and function of their business premises, and thus are a direct physical loss or damage to their covered property for which coverage is required absent an exclusion. Notably, businesses are not necessarily claiming physical damage caused by the COVID-19 virus, or that there is even COVID-19 virus present on their premises. Instead, the claim is that the shutdown orders themselves, imposed due to the threat of the virus, cause direct physical loss or damage to the insured's covered property by impairing the use and value of their business premises.

It remains to be seen whether courts will find that impairment to property resulting from a governmental shutdown order constitutes a direct physical loss or damage to covered property. There is no doubt, however, that these and similar coverage issues will be raised throughout the country in response to numerous state orders limiting public gatherings and suspending commercial activities in the fight against COVID-19, and that their resolution will be of great consequence to insureds and insurers alike.

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