COVID-19: NEW JERSEY ASSEMBLY INTRODUCES LEGISLATION TO PROVIDE SMALL COMPANIES WITH BUSINESS INTERRUPTION COVERAGE FOR COVID-19 LOSSES

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By: Frederic J. Giordano

As COVID-19 continues to disrupt businesses across the globe, including in New Jersey, many companies are looking to their insurance policies for coverage concerning business interruption losses resulting from the disease. In New Jersey, pending legislation would help certain small businesses secure coverage for those claims despite early indications from the insurance industry that most insurers will deny coverage for such losses.

On March 16, 2020, the New Jersey Assembly introduced Bill A-3844.[1] The bill, if passed, would require that any property insurance policy that was issued to an insured with 100 or fewer full-time employees[2] in the state of New Jersey, and in effect as of March 9, 2020, which includes coverage for loss of use and occupancy and business interruption, be construed to include coverage for business interruption losses due to COVID-19 and viruses in general.[3]

Bill A-3844 specifically requires that insurers provide coverage for business interruption "due to global virus transmission or pandemic" for as long as the State of Emergency declared by New Jersey's governor on March 9, 2020, remains in effect.[4] The statement accompanying the bill reasons that insurance industry sources have indicated that coverage for such losses generally is not available, even for businesses that had the foresight to purchase business interruption insurance coverage.[5] The New Jersey Assembly seeks to remedy this perceived gap by requiring that business interruption insurance specifically include, among the covered perils, coverage for business interruptions due to "global virus transmission or pandemic."[6] The bill lays out three basic conditions that would need to be met:[7]

1. The coverage must be "for business interruption due to global virus transmission or pandemic, as provided in the Public Health Emergency and State of Emergency declared by the Governor in Executive Order 103 of 2020 concerning the coronavirus disease 2019 pandemic";
2. The coverage must "indemnify the insured, subject to the limits under the policy, for any loss of business or business interruption for the duration of that declared State of Emergency"; and
3. The coverage must be "for policies issued to insureds with less than 100 eligible employees, in the State of New Jersey, and in force on the effective date of this act."

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The bill would also permit insurers who pay business interruption claims under the act to apply to the New Jersey Department of Banking and Insurance for reimbursement. The funds to reimburse insurers will come from a fund to which all insurers covering risks in New Jersey would be required to contribute.[8]

The bill was reported out of the Assembly Homeland Security and State Preparedness Committee on March 16, but it was reportedly held from a floor vote in the New Jersey Assembly by the sponsoring assemblyperson pending discussions with insurers.[9] Predictably, insurers have voiced their opposition to the bill and have cited a myriad of exclusions and legal considerations in support of their position.

It is unknown at present when the full New Jersey Assembly might take up the bill. Policyholders should keep abreast of developments and use the bill as a tool to supplement their pursuits of insurance coverage in the event that the bill becomes law.

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[1] A. 3844, 219th Leg. (N.J. 2020), https://www.njleg.state.nj.us/2020/Bills/A4000/3844_I1.HTM ; Assembly Homeland Sec. and State Preparedness Comm. Statement to A. 3844 (Mar. 16, 2020), https://www.njleg.state.nj.us/2020/Bills/A4000/3844_S1.HTM.

[2] The legislation identifies an eligible employee as a full-time employee who works a normal workweek of 25 or more hours.

[3] A. 3844, *supra note* 1.

[4] A. 3844, *supra note* 1, at § 1(b).

[5] Notwithstanding the legislature's understanding of the insurance industry's position, many policyholders believe that coverage for business interruption losses resulting from COVID-19 already exists under certain property insurance policies.

[6] A. 3844, *supra note* 1.

[7] A. 3844, *supra note* 1, at § 1(a)–(c).

[8] A. 3844, *supra note* 1, at § 3(a)–(c).

[9] Harold Brubaker, *Insurance companies may not pay for business losses from coronavirus. N.J. bill aims to change that*, PHILA. INQUIRER (Mar. 19, 2020), https://www.inquirer.com/health/coronavirus/coronavirus-small-business-losses-insurance-claims-coverage-20200319.html

KEY CONTACTS



FREDERIC J. GIORDANO
PARTNER

NEWARK
+1.973.848.4035
FREDERIC.GIORDANO@KLGATES.COM

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