

# Client Alert

May 2020

## State Statutory Pandemic-Related Insurance Relief Efforts

Policyholders have encountered broad and nearly universal denials from insurance carriers for claims seeking coverage for business interruption losses arising out of the COVID-19 situation and related shelter-in-place orders. Previously, [Olshan](#) noted that certain state legislatures were considering bills that would require insurers to cover such losses, at least for certain types of businesses.

The Commonwealth of Pennsylvania has been one of the more active states, with multiple proposed bills on this subject being considered by its legislature. A recently introduced bill approaches the problem differently than other proposals that simply require coverage. This new approach appears aimed at surviving constitutional challenges if the bill is enacted into law, and therefore could be a game changer for policyholders in Pennsylvania.

Pennsylvania Senate Bill No. 1127 seeks to legislatively address the issue of the proper interpretation of particular policy terms that insurers are using to deny coverage. Specifically, the bill addresses (1) whether the presence of viral particles on surfaces is physical loss or damage to those surfaces, (2) how a business would prove that COVID-19 was actually on the premises given the paucity of available testing, and (3) whether stay-at-home orders are the “direct result” of physical damage as opposed to being aimed at preventing person-to-person transmission.

The bill dictates that any premises in which an infected person has been “shall be deemed” to have suffered property damage. In addition, it provides that all commercial establishments and other areas of business activity within a municipality have suffered the “actual, and not merely suspected, presence of communicable disease” if any one person within that municipality has been infected. The bill also states that the stay-at-home order from the governor in effect in Pennsylvania “constitutes an order of civil authority ... as a direct result of physical damage at or in the immediate vicinity of those locations.” These are just three of a number of

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potential hurdles in standard policy language that would be effectively eliminated in Pennsylvania if this bill becomes law.

Unlike other bills that just mandate coverage, this proposal is more nuanced and clearly authored with the assistance of someone familiar with the policy interpretations being advocated by insurance companies. By legislatively mandating the meaning of potentially ambiguous policy terms, Pennsylvania may take the first big step forward in securing insurance recovery for its businesses. Additionally, unlike proposed legislation in other states, this bill does not contain any provision for “reimbursement” by the government for payment of some or all of these claims. (*See, e.g.*, Section 3 of New York A.10226B.)

Most insurance policies do not contain forum selection clauses and allow policyholders to bring suit in any forum where there is jurisdiction. Consultation with experienced insurance professionals and counsel about the proper forum and choice of law rules can maximize a company’s recovery from its insurance assets. Insurance policy interpretation is a matter of state law, and the same language can be interpreted very differently depending on the law that applies to the policy. Please contact the Olshan attorney with whom you regularly work or the attorney listed below if you would like to discuss further or have questions.

Olshan lawyers from multiple practice groups are working together with clients to address COVID-19-related matters, including the CARES Act stimulus programs (i.e., the Paycheck Protection Program and EIDL) and other corporate matters, including contractual analysis and financing, tax, restructuring, employee benefits and employment practices, insurance coverage and litigation. Click [here](#) to access additional materials addressing issues raised by COVID-19.

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