

Business Income Losses From Widespread Closure Orders Are Covered Under Standard Property Insurance Policies

By Pamela D. Hans and Marshall Gilinsky

ANDERSON KILL
1251 Avenue of the Americas
New York, NY 10020
(212) 278-1000

ANDERSON KILL
1760 Market Street, Suite 600
Philadelphia, PA 19103
(267) 216-2700

ANDERSON KILL
1055 Washington Boulevard, Suite 510
Stamford, CT 06901
(203) 388-7950

ANDERSON KILL
1717 Pennsylvania Avenue, NW, Suite 200
Washington, DC 20006
(202) 416-6500

ANDERSON KILL
One Gateway Center, Suite 1510
Newark, NJ 07102
(973) 642-5858

ANDERSON KILL
Wells Fargo Building
355 South Grand Avenue, Suite 2450
Los Angeles, CA 90071
(213) 943-1444

ANDERSON KILL
107 Hobart Rd.
Newton, MA 02459
(617) 221-5445

www.andersonkill.com

Effective as of 8 p.m. on March 19, Gov. Wolf issued an order closing all businesses in Pennsylvania that are not life sustaining. The governor described the situation as a “disaster emergency,” “public health emergency of international concern.” He further declared that “during a disaster emergency” he had the authority to control the movement of persons within the Commonwealth of Pennsylvania and the occupancy of premises within the state. Within hours, Gov. Newsome issued an order requiring all residents of California to remain in their homes except as necessary to get food, prescriptions or health care. More such orders in other states and cities are likely to follow. The business interruption losses for such closed businesses are likely covered under many standard insurance policies.

Specifically, most property insurance policies include “civil authority” coverage in situations where property damage results in an order of civil authority that restricts access to the policyholder’s business. As reported in previous articles discussing coverage for COVID-19 business income losses, a strong argument can be made that the impact of relatively intangible things like a virus on property constitutes the “direct physical loss or damage” needed to trigger coverage, where the impact renders the affected property unusable. Courts have held that conditions like bacteria, gases and fumes that “rendered the insured property temporarily or permanently unusable or uninhabitable may support a finding that the loss was a physical loss to the insured property.”¹ Such findings are consistent with the fundamental purpose of business income insurance — to protect against the risk that a loss prevents the policyholder from using their insured property to generate revenues. The impact of COVID-19 on property nationwide, and the resulting closure orders — especially the sweeping order in Pennsylvania — represent a moment of truth for insurance companies that have made critical promises to protect their policyholders from such losses.





who's who

Pamela D. Hans

is the managing shareholder of Anderson Kill's

Philadelphia office. Her practice concentrates in the area of insurance coverage exclusively on behalf of policyholders. Her clients include utilities, mining companies, home builders, non-profit organizations, ethanol producers, commercial lenders, and hog processors, whom she has represented in disputes with their insurance companies.

phans@andersonkill.com
(267) 216-2720



Marshall Gilinsky

is a shareholder in the Boston office of Anderson Kill and practices in the firm's Insurance Recovery and Commercial Litigation Departments.

During his 20-year career representing policyholders, Mr. Gilinsky has recovered hundreds of millions of dollars for his clients, successfully litigating disputed claims under a variety of insurance products, including property and business interruption insurance, commercial general liability insurance, errors and omissions insurance, directors and officers' insurance.

mgilinsky@andersonkill.com
(617) 221-5445

ANDERSON KILL NEWSLETTERS & ALERTS

TO SUBSCRIBE PLEASE VISIT:

[www.andersonkill.com/
publications_subscribe.asp](http://www.andersonkill.com/publications_subscribe.asp)

TO UNSUBSCRIBE PLEASE EMAIL:

unsubscribe@andersonkill.com

Whether coverage exists will depend on the specific language of a policy and circumstances faced by the policyholder. Businesses should read their policies carefully.

There can be no reasonable dispute that businesses in Pennsylvania, ordered to close their doors because of a "disaster emergency" and "public health emergency" of global proportions, will suffer substantial losses as a result of the widespread presence and resulting damage from COVID-19. So, too, with businesses in California whose customers are confined to their homes.

While we all take extreme and necessary steps to protect ourselves, our communities, and our families during this emergency, businesses that are suffering extraordinary losses because of the mandated closures in Pennsylvania and nationwide should carefully analyze their insurance policies and consult with trusted advisors to evaluate their rights to coverage for all covered losses as a result of the COVID-19 virus in our midst. ▲

ENDNOTES

¹ *Mellin v. Northern Sec. Ins. Co.*, 115 A.3d 799, 805 (N.H. 2015); see also *Gregory Packaging, Inc. v. Travelers Prop. Cas. Co. of Am.*, 2014 U.S. Dist. LEXIS 165232, at *15-17 (D.N.J. Nov. 25, 2014) ("courts considering non-structural property damage claims have found that buildings rendered uninhabitable by dangerous gases or bacteria suffered direct physical loss or damage").

The information appearing in this newsletter does not constitute legal advice or opinion. Such advice and opinion are provided by the firm only upon engagement with respect to specific factual situations.

We invite you to contact the newsletter's editor, Pamela Hans, at phans@andersonkill.com or (267) 216-2720, or Robert D. Chesler, at rchesler@andersonkill.com or (973) 642-5864, with your questions and/or concerns.

