

After a Year of Pandemic, Assess Your Insurance Coverage

By Pamela Hans and Bruce Strong

As the one-year anniversary of the first coronavirus-related shutdowns in the U.S. approaches, a certain amount of reflection and action is warranted. Here we provide practical advice and action items for policyholders who have experienced COVID-19–related losses over the past year.

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1. Comply with time limitations in your insurance policies.

Policyholders who have experienced losses should evaluate their insurance policies now, place their insurers on notice of any loss, and comply with any time limits that may be imbedded in their insurance policies — such as timing of filing a claim or proof of loss or suit.

Insurance policies typically count the time within which a proof of loss must be provided from the date of the loss. Depending on the terms of your policy, the date of the loss may be the date of the first order of civil authority that impacted your business, or another later — or earlier — date. Close attention to these details is important to avoid unnecessary disputes about whether the proof of loss was filed on time.

Complying with these timing requirements can mean the difference between a friction-free payment of a loss and a fight about timing that could have been avoided.

2. Pay attention to suit limitations.

Insurance policies may also limit the time period within which a policyholder may take legal action against the insurance company. These “suit limitations” can be shorter than the otherwise applicable statute of limitation. For example, plaintiffs typically have at least two years to file a breach of contract action — and in many states, as much as six years. However, insurance companies sometimes attempt to shorten that time through a contractually imposed suit limitation within the insurance policy, often stipulating that a suit must be filed within one or two years. It should be noted that not all states uphold or enforce such suit limitations — but some do.

Suit limitations can be extended by agreement — and again, absent such an agreement, the suit limitation may be enforced. It is also important to review your insurance policy to understand the start-date for a suit limitation. While the inclination may be to assume that the suit





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limitation starts to run only after the insurance company makes a coverage determination, in fact, many suit limitations start from the date of the loss.

If the loss started with the first closure order, the one-year anniversary is just weeks away. If your claim is unresolved, and you want to keep the litigation option open, now is the time to reach out and secure an agreement with your insurance company to extend a suit limitation and/or deadline for filing a proof of loss, to protect against a challenge to coverage based solely on meeting these deadlines.

3. Review your insurance policies and don't assume that a denial is correct.

When faced with a major loss, early response should always include a careful review of all your insurance policies to determine whether and how each policy may respond. As we have observed throughout the past year, insurance companies have insisted there is no coverage for COVID-19-related losses under typical property insurance policies. Some insurance companies asserted early that property policies were not intended to cover pandemic-related losses. Others argued there was no structural alteration and so no physical loss or damage to property that would trigger coverage under property policies.

Insurance companies have in fact succeeded in getting many cases seeking coverage for business income losses stemming from the pandemic dismissed. Policyholders are learning from experience, however — for example, citing past cases in which coverage was found under property policies for other airborne hazards — and we are seeing more policyholder victories and courts siding with policyholders to find that COVID-19-related losses may be covered by insurance.

In one noteworthy recent decision, *Henderson Road Restaurant Systems Inc. dba Hyde Park Grill et al. v. Zurich American Insurance Co.*,¹ a federal judge in Ohio found coverage for some dozen restaurants, rejecting the insurance company's argument that coverage must be triggered by "direct physical loss of or damage to" property, and finding that the policy language could reasonably be read to extend coverage when the policyholder loses its ability to use its insured properties for their intended purpose. Other cases in which rulings have favored policyholders include *North State Deli, LLC, v. Cincinnati Ins. Co.*²; *Cajun Conti LLC v. Certain Underwriters at Lloyd's*³; *Studio 417, Inc. v. Cincinnati Ins. Co.*⁴; *Elegant Massage, LLC v. State Farm Mut. Auto. Ins. Co.*⁵; and *JGB Vegas Retail Lessee, LLC v. Starr Surplus Lines Ins. Co.*⁶ ▲

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ENDNOTES

- 1 *20-cv-01239 (N.D. Ohio Jan. 19, 2021).*
- 2 *No. 20 CVS 02569, 2020 N.C. Super LEXIS 38 (N.C. Super Ct. Oct. 7, 2020).*
- 3 *No. 2020-02558 (La Dist. Ct. Nov. 4, 2020).*
- 4 *478 F. Supp. 3d 794 (W.D. Mo. 2020).*
- 5 *No. 2:20-CV-265, 2020 WL 7249624 (E.D. Va. Dec. 9, 2020).*
- 6 *Case No. A-20-816628-B (Clark Cty. Dist. Ct. Nov. 30, 2020).*

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

