

Ohio Follows NJ: Legislature Introduces Bill to Force Insurers to Pay for COVID-19-Related Business Interruption Losses

By: Anthony L. Miscioscia and Timothy A. Carroll

Insurance Coverage and Bad Faith Alert

3.25.20

Yesterday, on March 24, 2020, following in New Jersey's footsteps, the Ohio legislature introduced a bill, H.B. No. 589, "[t]o require insurers offering business interruption insurance to cover losses attributable to viruses and pandemics," by which the legislature is referring to COVID-19.

The bill provides that "every policy of insurance insuring against loss or damage to property, which includes the loss of use and occupancy and business interruption, in force in [Ohio] on the effective date of this section, shall be construed to include among the covered perils under that policy, coverage for business interruption due to global virus transmission or pandemic during the state of emergency."

The bill further provides that "[t]he coverage required by this section shall indemnify the insured, subject to the limits under the policy, for any loss of business or business interruption for the duration of the state of emergency," which the bill defines as "the state of emergency declared under Executive Order 2020-01D, issued on March 9, 2020, to protect the well-being of Ohio citizens from the dangerous effects of COVID-19."

The bill does however, have some limitations. For instance, it would apply only to policies issued to insureds that meet all of these criteria: (1) the insured is located in Ohio; (2) the insured employs 100 or fewer eligible employees[1]; and (3) the insured was covered by an insurance policy described above that was in force on the effective date of this section.

Like the New Jersey bill before it, the Ohio bill also allows any insurer which pays for such COVID-19-related losses to request from the Ohio Superintendent of Insurance "relief and reimbursement from funds collected and made available" for the purpose of the bill. The bill would require the Superintendent to establish procedures for insurers to submit reimbursement claims, and pay the claims either (1) "from such funds as are available to the Superintendent," or (2) "after the assessment charge . . . is collected from the collected amounts." As in New Jersey, the Ohio Superintendent is required under the bill to "charge an assessment to insurers engaged in the business of insurance . . . in an amount as necessary to recover amounts paid to insurers" who submit claims for reimbursement. The bill outlines further procedures for this process, which include setting up a "Business Interruption Fund" for collecting the assessments from insurers.

The bill, which if passed would go into immediate effect, concludes with an explanation of its purpose: "This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is to protect small businesses from catastrophic losses caused by commercial decline necessary to prevent the spread of COVID-19."

The Ohio bill, like its earlier New Jersey counterpart, is silent regarding any policy which contains the ISO form "Exclusion for Loss Due To Virus Or Bacteria," or its equivalent. Thus, the bill would force insurers to pay for losses which, in the first place, do not constitute "direct physical loss or damage" to covered property, and also appears to be intended to require payment despite the presence of a policy's unambiguous Virus exclusion. As we discussed regarding New Jersey's bill, which also ignored the existence of any Virus exclusion in policies, ISO made explicit reference to SARS — another coronavirus — when proposing the Virus exclusion to state

legislatures.

The times are indeed unprecedented. With this bill, the state of Ohio would join New Jersey in taking the extraordinary step of forcing insurers doing business in Ohio to cover losses which they never agreed to cover — and for which they were never compensated with premium. As with the New Jersey bill, which is waiting for another vote in the Assembly, we are tracking Ohio H.B. No. 589 closely.

If you have any questions or need more information, contact Anthony L. Miscioscia (misciosciaa@whiteandwilliams.com; 215.864.6356) or Timothy A. Carroll (carrollt@whiteandwilliams.com; 215.864.6218).

As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

[1] The term “eligible employee” is defined as a “a full-time employee who works a normal work week of [25] or more hours.”

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.