

'Business Interruption' Recovery May Be Uphill Climb For Insureds

Description

PS&H Partner and Chair of the Litigation Practice, Paul Kessimian, was quoted extensively in a recent *Rhode Island Lawyers Weekly* article discussing the challenges that insureds face as they attempt to recover pandemic-related losses through business interruption provisions in their commercial insurance policies and the expected increase in litigation because of it.

The article discusses that typical policy language, as it currently stands, could pose difficulties for insureds to claim "direct physical loss" in the wake of COVID-19.

"At the 10,000-foot level, the current state of the law will make a business interruption claim based on COVID-19 difficult," Paul explains. "The standard language as interpreted by most case law would tend to preclude such claims because coverage has to involve a 'covered cause of loss,' which most often means a direct physical loss or damage to property."

"In the case of the pandemic, 'direct physical loss' is going to be a challenge, because insurers will say, 'You can go in to your business; there is no physical damage.'"

Paul also points out that losses incurred due to shutdown based on an "order of civil authorities" may not be a determinative factor because physical damage usually remains as a requirement for coverage.

As increased litigation may influence changes to the law, Paul suggests to business owners the importance of maintaining detailed records of substantial losses. He also recommends that after consulting with counsel, business owners might consider filing a claim to cover their bases.

Rep. John J. Lombardi, a Providence lawyer, is preparing to introduce state legislation that would provide "a mechanism by which certain businesses that suffer losses due to interruption as a result of the coronavirus disease 2019 pandemic may recover those losses from their insurer if they had a policy of business interruption in force on March 9, 2019," the date that Gov. Gina Raimondo declared a state of emergency through Executive Order 20-02.

In addition to attorneys expressing reservations over whether such legislation would withstand scrutiny, Paul predicts that such legislation would bring litigation on a practical front, as well as, a constitutional front.

"It's fair to say this is an evolving area of the law that will be heavily litigated, and it's hard to know how it will play out," Paul says.

To read the full article as published in *Rhode Island Lawyers Weekly*, [click here](#). (Subscription required.)

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