



Looking Out For Business Interruption Policyholders

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By: *Gerard Mooney*

Business Interruption insurance policies in particular have taken center stage during the COVID-19 pandemic. On April 14, 2020, California Insurance Commissioner Ricardo Lara issued a **Notice** addressing reports of illegal and unfair practices in the handling of insureds' claims for business interruption coverage, and reiterating the duties of insurers and their representative in handling those claims. The takeaways for insureds are clear:

- An insured should usually err on the side of submitting the claim, even where the application of its Business Interruption coverage to the loss may not be certain.
- An insured's claim for policy benefits requires a timely and complete response from the insurer.
- Every insured making a claim to an insurer should carefully track and document the insurer's conduct in evaluating and responding to the claim, particularly now, as insurers seek to process an exponentially growing number of such claims.

Business Interruption coverage is a form of insurance that covers the loss of income suffered by a business as a result of a disaster or other such circumstances, which can include, for example, acts of God, war or enactment of certain government regulations. The covered loss may include the closing of the business as a result of the event, or rebuilding the business after the event.

In the Notice, Commissioner Lara states that the Department of Insurance "has received numerous complaints . . . asserting that certain insurers, agents, brokers, and insurance company representatives are attempting to dissuade policyholders from filing a notice of claim under its Business Interruption insurance coverage, or refusing to open and investigate these claims upon receipt of a notice of claim." Commissioner Lara reiterates California statutes and regulations requiring insurance agents and brokers to accept and transmit to the insurer any communications from an insured indicating a "desire[]" to make a claim against a policy." Further, Commissioner Lara notes that "[u]pon receipt of a notice of claim," insurers are statutorily required to:

- immediately or otherwise within 15 days of receipt "acknowledge the notice of claim";
- "conduct and diligently pursue a thorough, fair, and objective investigation" of the claim; and,
- accept or deny the claim "in no event more than 40 days" after receiving proof of the claim.

The insurer must then “communicate the denial in writing” to the insured “listing all the legal and factual basis for such denial.”

While the Notice essentially restates existing law and insurance-related regulations, it makes clear the Department of Insurance will aggressively investigate insurers’ illegal and/or unfair practices in processing claims during these difficult times. Bottom line: the safest course of action for an insured suffering a business loss stemming from the COVID-19 pandemic or related government regulations is to submit a claim to their insurer if they have business interruption coverage, and to contact counsel if the insured believes the insurer improperly failed to accept, improperly processed, or wrongly denied the claim. Likewise, insurers and their representatives should be on notice that their conduct in responding to insurance claims during this pandemic will be subject to significant scrutiny.

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Clients with questions about this e-Alert or related issues are welcome to contact **Gerard Mooney**, other members of **Rutan’s Insurance Recovery and Coverage Counseling Group**, or the Rutan & Tucker attorney with whom you are regularly in contact.

Rutan’s Insurance Recovery and Coverage Counseling Group focuses on advising businesses and individuals in obtaining and evaluating insurance coverage, as well as on litigating and resolving disputed coverage claims. Our attorneys have extensive experience in all aspects of insurance coverage and related disputes, including those regarding property damage and business interruption losses, including those related to COVID-19; professional indemnity (errors & omissions); professional liability; directors & officers liability; cyber risk losses; construction defects; products liability; employment-related liability; environmental liability; and government investigations.

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Gerard (Gerry) Mooney handles complex litigation and transactional matters for large and small businesses and their owners in a wide array of industries, including insurance, residential and commercial real estate development, healthcare, entertainment, banking and finance, employment services and construction. Gerry practices in both State and Federal courts, and has successfully tried numerous cases for his clients before judges and juries. Gerry is also an experienced appellate attorney, having handled dozens of appeals before the California Courts of Appeal, the California Supreme Court, and the Ninth Circuit Court of Appeals.

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