

Publication

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Client Alert: Illinois Tells Insurers to “Err on the Side of the Policyholder” When Evaluating Insurance Claims Related to Vandalism, Riots and Civil Commotion

On June 5, 2020, we issued a Client Alert regarding insurance coverage for property damage and business income losses that businesses may have suffered due to recent incidents in cities across the country. On June 8, 2020, the Illinois Department of Insurance issued Company Bulletin 2020-15 on the same topic. This Bulletin may be of interest to businesses with property damage and income losses that are considering making claims under their property insurance policies. As we noted in our Client Alert, most property policies should cover such claims, and the Illinois Department of Insurance has now issued some guidelines on how the insurers should handle any claims.

The Department of Insurance notes the Governor’s proclamation of disaster areas in several Illinois counties and that the “events” described in the proclamations “resulted in property damage, including vandalism and looting.” The Department requests that all insurers licensed or authorized to transact business in Illinois “immediately implement the following protective measures:”

- [A]pply claims best practices consistent with the categorization of this event as a catastrophic event, including expedited claims handling, advance claim payments, and fair treatment of all policyholders,

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regardless of size.

- [I]mplement a moratorium on the cancellation or non-renewal of impacted policyholders for a period of 60 days from the date of this Company Bulletin.
- [E]rr on the side of the policyholder when paying claims as a result of riots, civil commotion, or vandalism from commercial policyholders who were unable to make full premium payments during the period following the Governor's Executive Order 2020-10, dated March 20, 2020.
- To the extent business interruption provisions are included and operative under a policy, base payouts on business activity levels that eliminate the impact of COVID-19.
- [E]rr on the side of the policyholder when considering the use of exclusions that may or may not be applicable.

From a coverage standpoint, there are a few interesting things in the Bulletin. First, depending on the policy language, the Department of Insurance's categorization of an "event" encompassed by the Governor's disaster proclamations as a "catastrophic event" may make it easier for insureds to show that a single "occurrence" of extended duration caused the damages and losses for purposes of meeting any policy deductibles, retentions and waiting periods. Second, the Department of Insurance clearly is aware of the risk that insurers may argue that businesses closed because of the COVID-19 pandemic have not suffered any loss of income from property damage due to vandalism or looting because they already were closed. Whether insurers would be justified in taking this position again depends on the policy language. Finally, insurers are always supposed to



use “best practices” in handling claims and err on the side of insureds when considering whether exclusions may apply to losses. Nevertheless, a reminder every now and again of insurers’ obligation to adjust claims fairly and in good faith is welcome.

It should be noted that the Department of Insurance only “requests” that insurers take the foregoing “protective measures” – it has limited ability to require insurers to adjust claims in accordance with these guidelines. Thus, any businesses that are considering making claims may want to retain experienced coverage counsel and forensic accountants that can assist them in navigating the claims process.

If you have any questions regarding riot, looting and vandalism claims or other insurance policyholder issues, please contact Angela Elbert, Paul Walker-Bright, Nicholas Graber or your Neal Gerber Eisenberg attorney.

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