

POLICYHOLDER NOTICE

COVID-19 (CORONAVIRUS) ADVISORY NOTICE TO POLICYHOLDERS – COMMERCIAL OUTPUT PROGRAM PROPERTY COVERAGE (COP)

This Notice is being provided at the request of the New York Department of Financial Services. The purpose of this Notice is to provide you with an overview of some of the relevant policy terms and conditions of our Commercial Output Program Property Coverage Form, including the Commercial Output Program Property Coverage Part CO 1000 10 02 and the Commercial Output Program Income Coverage Part CO 1001 04 02 (hereinafter “Property Policy”), that could affect a claim in connection with COVID-19. Please note that this Notice only includes an analysis of the Property Policy and does not include any endorsements whether manuscript or standard forms that may be part of any actual issued policy unless otherwise indicated below.

This Notice does not form part of your policy. No coverage is provided by this Notice nor can it be construed to replace any provision of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided. If there is any conflict between your policy and this Notice, **THE PROVISIONS OF THE POLICY SHALL PREVAIL.**

Carefully read your policy, including the endorsements attached to your policy.

The contents of this Notice are intended for information purposes only and is not intended to constitute legal or other professional advice and should not be relied upon in lieu of consultation with your own legal advisors.

Please be advised that there may be other provisions of the actual issued insurance policy that may affect the extent of coverage provided for any actual claim. Coverage can only be determined by applying all of the facts and circumstances of a given claim to terms and conditions of the actual issued policy.

Specific provisions of the Property Policy that may affect a claim in connection with COVID-19 include the following:

VIRUS OR BACTERIA EXCLUSION

The Property Policy contains the Virus or Bacteria Exclusion endorsement CL 0700 02 07 (including any similar version thereto) which provides as follow:

PERILS EXCLUDED

The additional exclusion set forth below applies to all coverages, coverage extensions, supplemental coverages, optional coverages, and endorsements that are provided by the policy to which this endorsement is attached, including, but not limited to, those that provide coverage for property, earnings, extra expense, or interruption by civil authority.

The following exclusion is added under Perils Excluded, item 1.:

Virus or Bacteria --

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"We" do not pay for loss, cost, or expense caused by, resulting from, or relating to any virus, bacterium, or other microorganism that causes disease, illness, or physical distress or that is capable of causing disease, illness, or physical distress.

This exclusion applies to, but is not limited to, any loss, cost, or expense as a result of:

- a. any contamination by any virus, bacterium, or other microorganism; or
- b. any denial of access to property because of any virus, bacterium, or other microorganism.

(emphasis added). To the extent loss is caused by or attributable to a virus, bacterium, or other microorganism, disease, illness, or physical disease such as COVID-19 it would be an excluded peril.

DIRECT PHYSICAL LOSS

The trigger for coverage under the Property Policy is "direct physical loss" as set forth in PROPERTY COVERED as follows:

"We" cover the following property unless the property is excluded or subject to limitations.

"We" cover direct physical loss to covered property at a "covered location" caused by a covered peril.

(emphasis added). Thus, for coverage to apply there must be direct physical loss to covered property from a peril not otherwise excluded. To the extent there is no direct physical loss caused by COVID-19, there would be no coverage under the Property Policy. Typically, there must be a distinct and demonstrable physical change to covered property necessitating some remedial action to demonstrate physical loss.

SUPPLEMENTAL COVERAGES

The Property Policy contains 8. Pollutant Cleanup and Removal Supplemental Coverage as follows:

8. **Pollutant Cleanup and Removal** -- "We" pay "your" expense to extract "pollutants" from land or water if the discharge, dispersal, seepage, migration, release, or escape of the "pollutants" is caused by a covered peril that occurs during the policy period. The expenses are paid only if they are reported to "us" in writing within 180 days from the date the covered peril occurs.

"We" do not pay the cost of testing, evaluating, observing, or recording the existence, level, or effects of "pollutants". However, "we" pay the cost of testing which is necessary for the extraction of "pollutants" from land or water.

The most "we" pay for each site or "covered location" is \$50,000 for the sum of all such expenses arising out of a covered peril occurring during each separate 12 month period of this policy.

Under the Definitions section, "pollutants" means:

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- a. any solid, liquid, gaseous, thermal, or radioactive irritant or contaminant, including but not limited to acids, alkalis, chemicals, fumes, smoke, soot, vapor, and waste. Waste includes materials to be recycled, reclaimed, or reconditioned, as well as disposed of; and
- b. electrical or magnetic emissions, whether visible or invisible, and sound emissions.

(emphasis added). To the extent a virus like COVID-19 would be considered a pollutant, the Pollutant Cleanup and Removal Supplemental Coverage applies only to extract pollutants from land or water if caused by a covered peril. To the extent loss or damage is caused by or attributable to any virus, bacterium or micro-organism such as COVID-19 and the Virus or Bacteria Exclusion endorsement is attached to the actual issued policy, it would be excluded and not a covered peril. Please see Virus or Bacteria Exclusion endorsement CL 0700 02 07 (including any similar version thereto).

INCOME COVERAGE

The Property Policy provides Income Coverage Part as an option.

The coverage options under Income Coverage Part are as follows:

COVERAGE OPTIONS

One of the following described coverage options applies when that option is indicated on the "schedule of coverages":

1. Earnings, "rents", and extra expense.
2. Earnings and extra expense.
3. "Rents" and extra expense.
4. Extra expense only.

If option 1. above is selected, the term Earnings includes "rents". When Option 3. is indicated, the term Earnings means only "rents".

The coverage under the Property Policy is provided as follows:

COVERAGE

"We" provide the following coverage unless the coverage is excluded or subject to limitations.

"We" provide the coverages described below during the "restoration period" when "your" "business" is necessarily wholly or partially interrupted by direct physical loss of or damage to property at a "covered location" or in the open (or in vehicles) within 1,000 feet thereof as a result of a covered peril.

If "you" lease, rent, or do not own the building "you" occupy, for the purposes of determining an Income Coverage loss, "your" location is the space that "you" lease, rent, or occupy, including but not limited to:

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1. all passageways to "your" location within the building; and
2. "your" business personal property in the open (or in a vehicle) within 1,000 feet.

(emphasis added). For income coverage to apply, there must be direct physical loss of or damage to covered property as a result of a covered peril. To the extent there is no direct physical loss of or damage caused by COVID-19, there would be no coverage for income loss under the Property Policy.

The Property Policy contains the following Income Coverage Extension:

1. **Interruption by Civil Authority** -- "We" extend "your" coverage for earnings and extra expense to include loss sustained while access to "covered locations" or a "dependent location" is specifically denied by an order of civil authority. This order must be a result of direct physical loss of or damage to property, other than at a "covered location" and must be caused by a covered peril. Unless otherwise indicated on the "schedule of coverages", this Income Coverage Extension is limited to 30 consecutive days from the date of the order.

(emphasis added). The above Income Coverage Extension requires that property, other than at a "covered location" sustain direct physical loss of or damage caused by a covered peril. To the extent there is no direct physical loss of or damage caused by COVID-19 there would be no coverage for loss under this Income Coverage Extension.

The Property Policy contains the following Supplemental Income Coverages:

2. **Dependent Locations** -- Coverage for earnings and/or extra expense is extended to loss of earnings or extra expenses that "you" incur during the "restoration period" when "your" "business" is interrupted by direct physical loss of or damage, caused by a covered peril, to property at a "dependent location".
5. **Contract Penalty** -- Coverage for earnings is extended to cover contract penalties that "you" are assessed or are required to pay because "you" are unable to complete a project or fill an order in accordance with contract terms or conditions.

"Your" inability to complete a project or fill an order on time must be a direct result of physical loss of or damage to covered property caused by a covered peril at a "covered location".

(emphasis added). Each of the above listed Supplemental Income Coverages or Income Coverage Extensions require that the subject property of each respective provision sustain direct physical loss of or damage caused by a covered peril. For the Supplemental Income Coverages or Income Coverage Extensions to apply, there must be direct physical loss of or damage to covered property by a covered peril. To the extent there is no direct physical loss or damage caused by COVID-19 to the subject property of each respective provision, there would be no coverage for income loss under the Supplemental Income Coverages or Income Coverage Extensions of the Property Policy.

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Additionally, the Property Policy contains a Pollutant Cleanup and Removal Supplemental Income Coverage as follows:

- Pollutant Cleanup and Removal** -- When there is a loss to a "covered location" caused by a covered peril, coverage for earnings is extended to loss of earnings during the "restoration period" due to the increased time of interruption of "your" "business" caused by the enforcement of any ordinance, law, or decree that requires "you" to extract "pollutants" from land or water at the "covered location".

This Supplemental Income Coverage only applies if the discharge, dispersal, seepage, migration, release, or escape of the "pollutants" into the land or water at the "covered locations" is caused by a covered peril and occurs during the policy period.

Coverage for earnings is not extended to loss of earnings during the "restoration period" due to the increased time of interruption of "your" "business" caused by the enforcement of any ordinance, law, or decree that requires "you" to test, evaluate, observe, or record the existence, level, or effects of "pollutants". However, "we" cover the increased period of interruption when testing is necessary for the extraction of "pollutants" from land or water.

The ordinance, law, or decree must be in force at the time of loss.

The most "we" pay in any one occurrence or at any one location under this Supplemental Income Coverage is \$25,000.

(emphasis added). To the extent a virus like COVID-19 would be considered a pollutant, the Pollutant Cleanup and Removal Income Coverage Extension applies only to extract pollutants from land or water if caused by a covered peril. To the extent loss or damage is caused by or attributable to any virus, bacterium or micro-organism such as COVID-19 and the Virus or Bacteria Exclusion endorsement is attached to the actual issued policy, it would be excluded and not a covered peril. Please see Virus or Bacteria Exclusion endorsement CL 0700 02 07 (including any similar version thereto).

PERILS COVERED

The perils covered under the Property Policy is as follows:

"We" cover risks of direct physical loss unless the loss is limited or caused by a peril that is excluded.

(emphasis added). As indicated above in this Notice, to the extent loss is caused by or attributable to any virus, bacterium, or other microorganism, disease, illness, or physical disease such as COVID-19 it would be an excluded peril.