

# POLICYHOLDER NOTICE

## COVID-19 (CORONAVIRUS) ADVISORY NOTICE TO POLICYHOLDERS – COMMERCIAL PROPERTY COVERAGE (ISO)

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 a general overview of some of the relevant policy terms and conditions of our Insurance Services Offices, Inc. (ISO) Commercial Property Coverage Part which includes, but is not limited to, building and personal property, business interruption, extra expense, action of civil authority and/or dependent locations, and also includes Causes of Loss forms and standard endorsements (collectively "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 manuscript or non-standard endorsements 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 general 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.

Your Property Policy may include business income loss and related time element coverages. Specific provisions of the Property Policy that may affect a claim in connection with COVID-19 include the following:

### **NEW YORK – EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA**

The Property Policy contains a New York – Exclusion Of Loss Due To Virus Or Bacteria endorsement (CP 01 78 08 08) (or any similar version thereof) which provides as follows:

- A. The exclusion set forth in Paragraph B. applies to all coverage under all forms and endorsements that comprise this Coverage Part, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.
- B. We will not pay for loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease.

However, this exclusion does not apply to loss or damage caused by or resulting from "fungus", wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part.

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- C. The terms of the exclusion in Paragraph B., or the inapplicability of this exclusion to a particular loss, do not serve to create coverage for any loss that would otherwise be excluded under this Coverage Part.

To the extent loss or damage is caused by or results from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease, such as COVID-19, such loss or damage would be an excluded peril.

### **POLLUTION EXCLUSION**

The Property Policy contains a pollution exclusion in Causes of Loss – Special Form (CP 10 30 09 17) which provide as follows:

Discharge, dispersal, seepage, migration, release or escape of “pollutants” unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the “specified causes of loss”. But if the discharge, dispersal, seepage, migration, release or escape of “pollutants” results in a “specified cause of loss”, we will pay for the loss or damage caused by that “specified cause of loss”.

This exclusion, I., does not apply to damage to glass caused by chemicals applied to the glass.

“Pollutants” is defined in Business Income (And Extra Expense) Coverage Form (CP 00 30 10 12) and Business Income (Without Extra Expense) Coverage Form (CP 00 32 10 12) as follows:

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

To the extent loss or damage is caused by or results from the discharge, dispersal, seepage, migration, release or escape of “pollutants”, and where COVID-19 is determined to fall within the definition of “pollutants”, such loss or damage would be excluded.

### **DIRECT PHYSICAL LOSS OR DAMAGE**

The trigger for building and personal property coverage under the Property Policy is “direct physical loss of or damage” to Covered Property as set forth in A. Coverage of Building And Personal Property Coverage Form (CP 00 10 10 12) as follows:

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

(emphasis added). Thus, for coverage to apply there must be direct physical loss or damage to covered property from a Covered Cause of Loss. To the extent there is no direct physical loss or damage 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 or damage.

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## BUSINESS INTERRUPTION

The trigger for business interruption coverage under the Property Policy is “direct physical loss of or damage to property” as set forth in A. Coverage, 1. Business Income of Business Income (And Extra Expense) Coverage Form (CP 00 30 10 12) and Business Income (Without Extra Expense) Coverage Form (CP 00 32 10 12) as follows:

We will pay for the actual loss of Business Income you sustain due to the necessary “suspension” of your “operations” during the “period of restoration”. The “suspension” must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit Of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of such premises.

(emphasis added). Thus, for coverage to apply there must be direct physical loss or damage to property at a premises described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations from a Covered Cause of Loss. To the extent there is no direct physical loss or damage 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 or damage.

## EXTRA EXPENSE

The trigger for extra expense coverage under the Property Policy is “direct physical loss or damage to property” as set forth in A. Coverage, 2. Extra Expense of Business Income (And Extra Expense) Coverage Form (CP 00 30 10 12) as follows:

- b. Extra Expense means necessary expenses you incur during the “period of restoration” that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.

(emphasis added). Thus, for extra expense coverage to apply there must be direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss. To the extent there is no direct physical loss or damage to property caused by or resulting from COVID-19, there would be no extra expense coverage under the Property Policy.

## COVERED CAUSE OF LOSS

For Business Interruption coverage and Extra Expense coverage, there must be direct physical loss or damage caused by or resulting from a Covered Cause of Loss. There are three Causes of Loss forms that describe what is a Covered Cause of Loss. Only the Cause of Loss form attached to a policyholder’s actual issued policy will apply to any coverage analysis. Generally, each Cause of Loss form describes a Covered Cause of Loss as follows:

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Under Causes of Loss – Basic Form (CP 10 10 10 12), Covered Causes of Loss means the following: fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire-extinguishing equipment; sinkhole collapse; and volcanic action.

Under Causes of Loss – Broad Form (CP 10 20 10 12), Covered Causes of Loss means the following: fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire-extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.

Under Causes of Loss – Special Form (CP 10 30 09 17), Covered Causes of Loss means direct physical loss unless the loss is excluded or limited in this policy.

To the extent COVID-19 does not constitute a Covered Cause of Loss, there would be no coverage under the Property Policy.

### **ADDITIONAL COVERAGES – CIVIL AUTHORITY**

The Property Policy provides Civil Authority coverage as an Additional Coverage in the Business Income (And Extra Expense) Coverage Form (CP 00 30 10 12) and Business Income (Without Extra Expense) Coverage Form (CP 00 32 10 12). Please note that any reference to coverage for Extra Expense applies only to Business Income (And Extra Expense) Coverage Form (CP 00 30 10 12). The Civil Authority Additional Coverage provides as follows:

#### **Civil Authority**

In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations.

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority Coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

Civil Authority Coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:

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- (1) Four consecutive weeks after the date of that action; or
  - (2) When your Civil Authority Coverage for Business Income ends;
- whichever is later.

The Civil Authority Additional Coverage requires that there must be damage to property other than the described premises caused by a Covered Cause of Loss. To the extent there is no damage to property other than the described premises caused by a covered cause of loss there would be no coverage for business income loss under the Civil Authority Additional Coverage of the Property Policy.

## DEPENDENT PROPERTIES

The Property Policy may also provide Business Income From Dependent Properties – Broad Form (CP 15 08 10 12) in relevant part as follows:

- A. We will pay for the actual loss of Business Income you sustain due to the necessary “suspension” of your “operations” during the “period of restoration”. The “suspension” must be caused by direct physical loss of or damage to “dependent property” at the premises described in the Schedule caused by or resulting from a Covered Cause of Loss.

\* \* \*

- C. Secondary Dependencies – Contributing And Recipient Locations

1. If the Schedule shows applicability of coverage for a “secondary contributing location”, then the following applies, subject to Paragraphs C.3. and C.4.:

We will pay for the actual loss of Business Income you sustain due to the necessary “suspension” of your “operations” during the “period of restoration”. The “suspension” must be caused by direct physical loss of or damage to property at a “secondary contributing location”, caused by or resulting from a Covered Cause of Loss, which in turn results in partial or complete interruption of the materials or services provided to you by the “dependent property” described in the Schedule, thereby resulting in the “suspension” of your “operations”.

\* \* \*

- D. The following is added to Additional Coverages:

### Miscellaneous Locations

We will pay for the actual loss of Business Income you sustain due to direct physical loss or damage at the premises of a “dependent property” not described in the Schedule (miscellaneous location) caused by or resulting from any Covered Cause of Loss. A road, bridge, tunnel, waterway, airfield, pipeline or any other similar area or structure is not a miscellaneous location.

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(emphasis added). The Business Income From Dependent Properties coverage requires that the specified property sustain direct physical loss or damage caused by a Covered Cause of Loss. To the extent there is no direct physical loss or damage caused by a Covered Cause of Loss to the specified property, there would be no Business Income From Dependent Properties coverage under the Property Policy.