

POLICYHOLDER NOTICE

COVID-19 (CORONAVIRUS) ADVISORY NOTICE TO POLICYHOLDERS – COMMERCIAL PROPERTY (MMP)

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 Property Policy Type MMP 0201 0918 (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 itself 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.

Your Property Policy includes 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:

COMMUNICABLE OR INFECTIOUS DISEASE, CONDITION OR SICKNESS EXCLUSION

The Property Policy contains a Communicable or Infectious Disease, Condition or Sickness exclusion under paragraph 2.i. of Section IV – Perils Excluded as follows:

2. We will not pay for loss or damage caused by, or attributable to, any of the following:
 - i. Communicable or infectious disease, condition or sickness, including (i) any causative agent of any such condition, disease, or sickness regardless of whether such agent gives rise to any such condition, disease, or sickness, or (ii) any actual or attempted testing for, containing, detoxifying, mitigating, monitoring or neutralizing of, responding to, or assessing the effects of any communicable or infectious disease, condition or sickness or causative agent.

(emphasis added). To the extent loss or damage is caused by or attributable to a communicable or infectious disease, condition or sickness such as COVID-19 it would be an excluded peril.

DIRECT PHYSICAL LOSS OR DAMAGE

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The trigger for coverage under the Property Policy is “direct physical loss or damages” as set forth in Section I – Insuring Agreement and Covered Property, A. Insuring Agreement as follows:

This Policy insures against all risk of direct physical loss or damage to **covered property** described herein occurring during the term of this Policy, except as hereinafter excluded.

Unless specifically indicated otherwise, references to **covered location** in this Section I includes the **covered location** and within 1,000 feet thereof.

(emphasis added). Thus, for coverage to apply there must be direct physical loss or damage to covered property from a peril not otherwise excluded. 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.

TIME ELEMENT

Section V – Time Element Coverages, A. Insuring Agreement provides:

We will pay the actual **business income** loss sustained by you due to the necessary partial or total interruption of your business operations, services or production during the **period of indemnity** as a result of direct physical loss or damage to: (1) **covered property by a covered cause of loss**; or (2) property of the type insured under this Policy by a covered cause of loss which directly affects your use of the **covered property**, provided that you are a lessee or occupant of the premises where the direct physical loss or damage occurred.

(emphasis added). For business income coverage to apply, there must be direct physical loss or damage to covered property by 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 for business income loss under the Property Policy.

The Property Policy contains the following Additional Time Element Coverages:

1. **ATTRACTION PROPERTY**

We will pay the actual **business income** loss sustained by you and **extra expense** caused by direct physical loss or damage caused by a covered cause of loss to property of the type insured under this Policy that attracts business to a **covered location**, provided that such property is within the distance from the **covered location** as shown in Item **7.C.** of the Declarations under Attraction Property (hereinafter, the **attraction property**).

Coverage begins on the date and time that the **attraction property** sustains such direct physical loss or damage and ends on the date and time that the **attraction property** could be reopened for business, but in no event for more than the number of days shown in Item **7.C.** of the Declarations under Attraction Property.

2. **CONTINGENT TIME ELEMENT**

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- a. If direct physical loss or damage caused by a **covered cause of loss** to property of the type insured under this Policy is sustained by your direct supplier or your direct customer, anywhere in the world and such loss or damage:
- i. Wholly or partially prevents your direct supplier from supplying their goods and/or services to you; or
 - ii. Wholly or partially prevents your direct customer from accepting your goods and/or services;

then we will pay the actual **business income** loss and **extra expense** sustained by you during the **period of indemnity** with respect to such property of the type insured under this Policy. This coverage does not apply to new buildings or additions in the course of construction of any direct supplier or direct customer. You will cooperate with your direct supplier or direct customer and take any reasonable and necessary actions, including the use of other machinery, supplies or locations, to mitigate the loss payable herein.

- b. Subject to the Contingent Time Element sublimit(s) of liability shown in Item **7.C.** of the Declarations, we will pay the actual **business income** loss and **extra expense** sustained by you in accordance with Subsection **a.** above:
- i. If ingress to or egress from your direct supplier's or your direct customer's location is partially or totally prevented in accordance with the same exclusions, limitations and time period that apply to the Ingress & Egress Additional Time Element Coverage;
 - ii. If an order of civil or military authority limits, restricts or prohibits access to property not insured under this Policy, provided that the effect of such order partially or totally prohibits access to your direct supplier's or your direct customer's location in accordance with the same exclusions, limitations and time period that apply to the Interruption By Civil Or Military Authority Additional Time Element Coverage; or
 - iii. If an order of civil or military authority limits, restricts or prohibits partial or total access to your direct supplier's or your direct customer's location and such order is a direct result of: (i) a violent crime, suicide, attempted suicide, or armed robbery at such location, or (ii) a death or bodily injury (not including, disease or sickness) at such location. Coverage begins on the date and time that the order of civil or military authority limits, redirects or prohibits partial or total access to your direct supplier's or your direct customer's location and ends on the date such location could be reopened for business but in no event for more than the number of days shown in Item **C.** of the Declarations under Interruption By Civil Or Military Authority.

No Extended Period of Indemnity shall apply to Subsection **b.(i)**, **b.(ii)**, or **b.(iii)**.

- c. For the avoidance of doubt, the sublimit(s) of liability for Contingent Time Element is/are subject to any applicable sublimit of liability for **earth movement, flood** or **named storm**.

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- d. Notwithstanding the foregoing, this Contingent Time Element Additional Time Element Coverage does not apply to:
- i. Any supplier of electricity, gas, fuel, steam, water, refrigeration, sewerage service, internet, **cloud computing service** or **data, voice or video service**; or
 - ii. Your customers, if you are a supplier of electricity, gas, fuel, steam, water, refrigeration, sewerage service, internet, **cloud computing service** or **data, voice or video service**.

3. CONTRACTUAL PENALTIES

We will pay for contractual penalties you are legally liable to pay under the written provisions of a contract executed prior to the loss or damage due to direct physical loss or damage caused by a **covered cause of loss** to **covered property**.

5. EXTRA EXPENSE

We will pay loss sustained by you for **extra expense** during the **period of indemnity** resulting from direct physical loss or damage caused by a **covered cause of loss**.

The maximum amount that we will pay for all **extra expense** under this Policy is the Extra Expense sublimit of liability as shown in Item **7.C.** of the Declarations regardless of any other applicable coverages, Additional Coverages or Additional Time Element Coverages.

7. INGRESS & EGRESS

We will pay the actual **business income** loss sustained by you and **extra expense** caused by direct physical loss or damage caused by a **covered cause of loss** to property not insured under this Policy, provided that:

- a. Such direct physical loss or damage to such property totally prevents physical ingress to or egress from a **covered location**; and
- b. Such property not insured under this Policy is within the distance from the **covered location** as shown in Item **7.C.** of the Declarations under Ingress & Egress.

Coverage begins on the date and time that ingress to or egress from the **covered location** is totally prevented and ends on the date and time that the **covered location** could be reopened for business, but in no event for more than the lesser of 30 days or the number of days shown in Item **7.C.** of the Declarations under Ingress & Egress.

This Ingress & Egress Additional Time Element Coverage does not apply to any loss resulting from disruption of incoming or outgoing electricity, gas, fuel, water, steam, sewerage, refrigeration, **cloud computing service**, or any **data, voice or video service**.

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8. INTERRUPTION BY CIVIL OR MILITARY AUTHORITY

We will pay the actual **business income** loss sustained by you and **extra expense** if an order of civil or military authority limits, restricts or prohibits access to property not insured under this Policy, provided that:

- a. Such property sustains direct physical loss or damage caused by a **covered cause of loss**;
- b. Such property is within the distance from the **covered location** as shown in Item **7.C.** of the Declarations under Interruption by Civil or Military Authority; and
- c. The effect of such order is to totally prohibit access to a **covered location**.

Coverage begins on the effective date and time of such order and ends on the date and time that the **covered location** could be reopened for business, but in no event for more than the lesser of 30 days or the number of days shown in Item **7.C.** of the Declarations under Interruption By Civil Or Military Authority.

(emphasis added). Each of the above listed Additional Time Element Coverage requires that the subject property of each respective Additional Time Element Coverage sustains direct physical loss or damage caused by a covered cause of loss. For the Additional Time Element Coverages to apply, there must be direct physical loss or damage to covered property by a covered cause of loss. To the extent there is no direct physical loss or damage caused by COVID-19 to the subject property of each respective Additional Time Element Coverages, there would be no coverage for business income loss under the Additional Time Element Coverages of the Property Policy.

DEFINITIONS

Under Section VIII – Definitions, definition 10. covered cause(s) of loss is defined as follows:

Covered cause(s) of loss means a peril or other type of loss, not otherwise excluded under this Policy.

(emphasis added). As indicated above in this Notice, to the extent loss or damage is caused by or attributable to any communicable or infectious disease, condition or sickness such as COVID-19 it would be an excluded peril and not within the scope of the “covered cause(s) of loss” definition. Please see paragraph 2.i. of Section IV – Perils Excluded of the Property Policy.