



# MAG MILE LAW

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## **COVID-19 BUSINESS INTERRUPTION INSURANCE**

**April 1, 2020**

Nearly all insurance carriers define Covered Cause of Loss for business income coverage as “Direct Physical Loss to Covered Property.” Direct Physical Loss to Covered Property is not defined by property/business income policies and is therefore subject to court interpretation. Historically, Courts have defined Direct Physical Loss as structural damage/trauma to property (fire, vehicle driving through window, hail, snow, water, etc.). In the context of viruses, carriers will argue that: (1) viruses do not cause structural damage; and (2) no Court has held a virus causes direct physical loss to property.

While the above is true, some Courts have held a change in the utility, usefulness or intended purpose of a space that results in a loss of income constitutes Direct Physical Loss to Covered Property. Examples include noxious gas (such as ammonia or methamphetamine fumes) released into a space rendering it uninhabitable. In these instances, there was no structural damage to the property, but the presence of the substance rendered the space uninhabitable. With the space uninhabitable, the insured suffered an income loss due to lack of operation.

While nearly all insurance carriers would be subject to the above interpretation, most property policies also include an endorsement titled “Exclusion of Loss Due to Virus or Bacteria” (or similar). Most likely, any policy with this exclusion has no claim for business interruption coverage.

However, the availability of the virus exclusion endorsement to carriers further supports a conclusion that there is coverage with carriers that do not include the exclusion. Otherwise, why would the virus exclusion be available to insurers? Most jurisdictions liberally construe insurance policies in favor of coverage. Why? Because the policies are drafted by insurance carriers (ambiguity is construed against drafter).

Based on the lack of the virus exclusion and liberally construing the policy in favor of the insured, there is an argument for coverage. Given the financial stakes involved and the number of businesses impacted nationwide, it is an argument that needs to be made – especially on behalf of small businesses that cannot withstand one or two months of lost income.

For more information about business interruption coverage, contact Mario Iveljic at (708) 576-1624, or email him at [mario@magmilelaw.com](mailto:mario@magmilelaw.com).