

Protection of Property/Sue & Labor Coverage May be Available for Coronavirus Costs

One aspect of many first-party property insurance policies that has been largely overlooked in association with the recent Coronavirus outbreak is protection of property coverage.¹ Protection of property coverage, which can be found as a coverage extension or even as a condition in the policy, can take a variety of forms, but generally provides coverage for costs incurred to temporarily protect and preserve the insured property.

For most policies, protection of property coverage applies when there is an actual or imminent threat of direct physical loss or damage. How that works in the case of COVID 19 may vary from insurer to insurer and circumstance to circumstance. Where a policy does not exclude virus, insurers may take the position that the presence of virus on insured property is not direct physical harm. Does the presence of potentially infective material render the property damaged because it then has the potential to harm people? These questions will likely be hotly debated, but, in theory, the case for "sue and labor" coverage should be stronger because it seems one would not need to prove the presence of virus, but rather a reasonable measure to prevent the threat.

A variety of potential costs could fall under the heading of "protection of property": increased costs associated with testing and cleaning, consultants, demobilization costs, temporary security during a shutdown – there are likely others. Efforts to avoid contamination of the property and the consequent injury to employees and customers certainly seems like "protection of property."

Insureds should keep in mind that, in many policies, the insured must incur these costs as a condition of coverage. Consider the following provision from a builders' risk policy:

In case of direct physical loss or direct physical damage to Insured Property by perils insured under this Policy, it shall be lawful and necessary for the Insured, his or their factors, servants, or assigns, to sue, labor, and travel for, in and about the defense, safeguard, and recovery of the Insured Property, or any part thereof, without prejudice to this insurance, nor shall the acts of the Insured or the Company, in recovering, saving, and preserving the Insured Property in case of loss be considered a waiver or an acceptance of abandonment. The expenses so incurred shall be borne by the Insured and the Company proportionately to the extent of their respective interests.

If the insured's policy contains language similar to this, the insured is arguably obligated to defend, safeguard, and recover the Insured Property as a condition to coverage.

Depending on the type of policy and the language of the provision in question, insureds may have access to protection of property coverage through a sublimit or, in certain situations, without limitation as part of the full policy limit. Regardless, insureds should review their commercial property and builders' risk policies to determine what protection of property coverage may be available with respect to this pandemic.

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¹This coverage feature is alternatively referred to as "protection of property," "preservation of property," and/or "sue & labor."