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Wisconsin Insureds Should Check Their Policy's Time Limits for Bringing Suit for Business Interruption Losses

Millions have been spent on lawsuits over coverage for business losses related to the COVID-19 pandemic and resulting government restrictions, but there is still no clear answer as to whether standard business insurance policies provide coverage to business owners who have suffered staggering, if not fatal, losses over the past year. The doubt over coverage poses a dilemma for a policyholder in Wisconsin who made a claim that was denied by its insurer. Do you file suit and spend tens, perhaps hundreds, of thousands of dollars fighting the coverage battle or can you wait, saving your remaining resources, to determine if you can take advantage of any success others might achieve in already pending lawsuits?

Although there are several cases pending in federal and state courts here in Wisconsin, there has been no decided case in Wisconsin relating to insurance coverage for business interruption or business loss due to shutdowns caused by COVID-19. A majority of courts throughout the country have dismissed business interruption claims brought by restaurants and other service providers. Some policyholders have survived motions to dismiss. That provides some hope, but, survival does not necessarily mean victory. The one trial court victory of which we are aware was by a deli operator in a North Carolina state court. Although the policyholder won coverage for business losses, the insurer immediately appealed and the appellate court has yet to decide the case. Therefore, coverage for business interruption due to the pandemic, or any stay-at-home orders resulting from the pandemic, is still very much in doubt.

With that doubt, comes the risk that any fees spent pursuing a lawsuit will be lost if you do not succeed in proving coverage. So, it certainly would make economic sense to let someone else spend their money to fight that battle. But, can you afford to wait to see what happens in the currently pending cases? For Wisconsin policyholders, the answer is: It depends on whether your policy contains a provision that provides a time limit for bringing suit against your insurance company that is greater than one year.

Courts in Wisconsin have applied a special 12-month statute of limitation that applies specifically to "fire insurance" to all other property coverages. At least one

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court in Wisconsin, in an unpublished decision, has applied that statute of limitations to a business interruption claim (unrelated to the pandemic). However, there is a way around that 12-month limitation. Many property policies include conditions that relate to limitations of lawsuits against the insurer, often in a "Suit Against Us" provision. Those provisions often provide two- or three-year limits on suing the insurer under the policy. Wisconsin courts have ruled that the Wisconsin statute does not prohibit an insurer from extending the 12-month period of liability and have allowed policyholders to file suit within the longer time limit stated in their insurance policies. Therefore, you should check your insurance policy to determine whether it provides additional time to consider filing suit.

Because Gov. Evers issued his first stay-at-home order on March 25, 2020, unless your policy contains a longer time limit for bringing suit, you should consider bringing a lawsuit to preserve your claim for business interruption losses in Wisconsin by March 24, 2021, or your claim could be barred by the 12-month statute of limitations.

If you need help determining whether your policy contains a longer limitations period for bringing a lawsuit or if you wish to discuss the potential for bringing a lawsuit for business interruption coverage by March 24, please contact Steve Bogart or a Reinhart attorney as soon as possible.

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