

Deadlines Approaching for COVID-19 Business Interruption Claims: Don't Forfeit Coverage!

"For some of us it is hard to believe we have lived in the new COVID-19 world for a year, for others it seems like it has already been five years or more." – Dr. Anthony Fauci

Policyholders with COVID-19 insurance claims may not be aware that insurance policies limit the time they have to bring a lawsuit against their insurance company. Some of these contractual limitations periods may be as brief as one year from the date the company first suffered a loss and thus may be approaching rapidly, or have already passed.

What policyholders must do immediately:

- Review insurance policies and determine what deadlines exist.
- If a deadline is approaching, enter into a tolling agreement with the insurance carrier or file suit to preserve coverage.
- If a deadline has passed, consider if viable defenses are available or if there is another claim that is not subject to the suit limitation.

The following update provides information on the issue. Please contact a member of our insurance recovery practice **for a complimentary review of policy deadlines and advice on coverage options.**

Preserve COVID-19 Business Interruption Claims—Calculate All Applicable Deadlines

First-party property policies that provide coverage for losses from business interruption and civil authority for COVID-19 claims generally include a "Suit Against Us" or "Legal Action Against Us" provision limiting the time to bring a lawsuit (suit limitation clauses). Suit limitation clauses cap the time a policyholder has to bring a lawsuit against an insurance company for coverage disputes and often limit the time to a period of one or two years. In essence, suit limitation clauses are contractual statutes of limitations. However, these insurance policy clauses are normally for significantly shorter periods of time than the equivalent state statutes of limitation.

State law varies significantly on how these insurance suit limitations clauses are treated. While some states have insurance-specific statutes or rules that override suit limitations clauses with a different limitation period or mandate that the normal statute of limitations for contract disputes apply, other states strictly enforce suit limitation clauses in insurance policies.

In addition to whether these suit limitations clauses are even enforceable, there is also considerable variation in the policy language and among states' laws on when the suit limitation time period actually begins. In some cases, the clock begins from when an insurance company denies a claim. In others, however, the clock begins when the loss incepted and is strictly construed regardless of whether the policyholder is in active negotiations with a carrier or the carrier is still investigating the claim. In these states, policyholders may indeed feel misled and strung along by their insurance carrier, but coverage is still forfeited if the policyholder does not file suit by the limitation deadline. Other states have hybrid approaches and include automatic tolling. In California, for example, a suit limitation period runs from the date the loss "incepted," *but* is tolled from the time the

policyholder gives notice of the claim until coverage is denied by the insurance carrier.

The complexity of these state-by-state variations is magnified further by the novel nature of the coronavirus itself and the factual complexities of COVID-19 claims. When does a COVID-19 claim incept? Is it when there is proof an individual tested positive at a site location? When there is proof of community spread in the area? When a civil authority order closed a location? Or is it when a company first incurred financial loss?

Unfortunately, these are questions of first impression and have yet to be answered by the courts. As a result, policyholders should be conservative when calculating suit limitation periods and always err on the side of caution.

If after reviewing your policy you are unsure whether a deadline exists, consider writing to the carrier and asking them to confirm all deadlines in writing. If you are able to determine that a suit limitation deadline is rapidly approaching, you have two options to preserve your coverage: (1) file suit against your carrier, or (2) seek an extension of the suit limitation date and enter into a written agreement with your carrier extending the time to file suit.

Missed a Deadline? What Are the Options?

What should policyholders do if they have missed the suit limitation deadline? First, as discussed above, some states prohibit suit limitations clauses that are shorter than a certain time period. Policyholders should ensure they have checked all potentially relevant state statutes and rules. If the suit limitation deadline has been missed, are there facts that may justify an argument that the carrier waived its right or is estopped from asserting the suit limitations clause? Some jurisdictions have accepted these arguments under certain factual circumstances. Did the insurance carrier give reason to believe that the insurance company was going to pay the claim? Did the carrier state it was still investigating the claim or ask for additional information? Depending on the facts and jurisdiction, a valid waiver or estoppel argument may be an option.

If there is not a waiver or estoppel argument, is there a separate bad faith claim or a claim for unfair claims handling practices that may have an independent statute of limitations period that has not passed? In the event of a missed deadline, policyholders are advised to contact coverage counsel and to explore all available options.

How Perkins Coie Insurance Coverage Counsel Can Help

Policyholders must be vigilant about determining any suit limitations deadlines on their claims under both the insurance policy language and the applicable law. Our insurance recovery practice is currently advising dozens of clients on their COVID-19 claims.

- Policyholders who are unsure of the deadlines under their policy may receive a review at no charge of their first-party property policy to determine whether the policy contains a suit limitation clause or any other deadline that may affect their coverage for COVID-19 claims.
- If a deadline is approaching or has been missed, our attorneys are available for a half-hour free consultation to discuss potential coverage options.

For additional information, or to schedule an appointment, please contact a member of our [Insurance Recovery practice](#).

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