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Authorized Property and Business Interruption Insurers of Commercial Property in New Jersey to Include Statements That Policy May Not Cover Pandemics or Viruses

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On May 12, 2021, the Governor of New Jersey signed into law a bill that will require authorized insurers that provide property and business interruption insurance for commercial property in New Jersey to provide a summary to policyholders and applicants that includes a statement that the policy may not cover pandemics or viruses, once the New Jersey Department of Banking and Insurance (the “Department”) has developed a summary for such authorized insurers to use.

As the COVID-19 pandemic descended upon the country, so did the numerous executive actions limiting and shuttering businesses. Businesses small and large filed numerous claims against their insurance companies seeking coverage for the interruption of their businesses. The majority of courts across the country have continued to uphold the application of physical damage requirements for property coverage and the application of various exclusions contained within property and business interruption policies that preclude coverage for such COVID-19-related business interruption losses. In response, the New Jersey Legislature introduced legislation requiring insurance companies that provide business interruption insurance to educate their insureds about what is and what is not covered under their policies by distributing to their insureds a summary as prepared by the Department. A4805 which was introduced in October 8, 2020 enjoyed bipartisan and insurance trade association support, passing the Assembly on October 29, 2020 by a vote of 72 – 0. The legislation moved swiftly through Senate committee, passing the Senate on March 25, 2021 with a vote of 35 - 0. Revisions during the process included specifying that the Act applies to “authorized insurers”. On May 12, 2021, A4805 was signed into law by the Governor (P.L.2021, c.98).

The Department now has until August 10, 2021 to develop a one-page summary of common insurance clauses concerning coverage for the loss of use and occupancy of a commercial property and business interruption that may be used in a commercial insurance policy.

The summary is required to contain a statement that: “Your policy may not cover pandemics or viruses”. It must also include a statement that: “Most business interruption insurance policies cover losses sustained due to a suspension of business where the suspension was caused by direct physical loss of or damage to property or the insured’s premises, and where the loss or damage is caused by or results from a specified

peril or covered cause of loss. For such policies, a government ordered shutdown may not trigger business interruption insurance coverage in the absence of physical damage to the insured property.”

The new law directs all authorized insurers, upon publication of the summary by the Department, to provide the summary to any potential purchaser of, or policyholder seeking a renewal of, a policy that provides coverage for loss of use and occupancy of a commercial property and business interruption in New Jersey. The summary must be provided with the application for the policy or at the time of renewal. For policies that have already been issued, all such authorized insurers must deliver the summary within 90 days after the summary has been published by the Department.

While the intent of the new law is to ensure that consumers are aware of what their policies may not cover, the new law places the burden upon all authorized insurers to include the Department summary to all existing policyholders within 90 days of publication and to all future policyholders for policies issued for the use and occupancy of a commercial property in New Jersey.

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