

COVID-19 Business Interruption Losses: Time is of the Essence to Pursue Coverage

“Service of Suit” limitation period to file is less than a month away

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TAKEAWAYS

- ④ Many insurance policies have various limitation periods and exclusions built into them. One such limitation period is known as a “service of suit” limitation.
- ④ The service of suit limitation, if present, reduces the time frame in which a policyholder may bring suit against the insurer after the insurer denies the claim.
- ④ These service of suit provisions can be as short as 12 months from the date the loss began. In some cases, that 12-month period might expire in February or March 2021.

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The United States declared a national emergency in response to COVID-19 on March 13, 2020, and states quickly followed with stay-at-home orders that impacted businesses and institutions nationwide. More than 10 months have passed since the COVID-19 pandemic emerged in the United States and the prevalence of the virus has had significant impacts, not only with respect to the number of people infected and lives lost, but also to the widespread physical damages and economic losses suffered by businesses.

If your business is considering filing an insurance claim for business interruption losses, you must act immediately. And if your business already filed a claim, you may need to file a lawsuit or obtain a written extension from your insurer this month or risk forfeiting your ability to secure insurance coverage.

The first step is to ensure that the claim be submitted in advance of any applicable contractual limitations period. The next step is to review your insurance policy to see if there is a service of suit (or other applicable) limitation period. If there is a short limitations period, request an extension. But note, many insurers are

refusing to extend these limitations periods given the onslaught of claims they are facing, so you should not count on the insurer extending the time limit. Finally, if the insurer(s) refuses the extension consider filing suit to preserve your rights — many states strictly enforce the limitations period and failure to comply acts just like a statute of limitations, would resulting in claim preclusion.

Some states have laws overriding these requirements in favor of a more liberal statute of limitations, but you should make sure you understand your rights and take appropriate action to preserve them now.

Pillsbury's experienced coverage attorneys have been a leading force in advising clients on potential insurance recovery for COVID-19 losses. Our Insurance Recovery and Advisory team is well-equipped to review your policy without delay to determine whether a limitations period applies and to preserve your rights.

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