



Important Timing Considerations For COVID-19 Business Interruption Claims

April 27, 2021 | [Policyholder Protection, Insurance, Policy](#)



**Matthew B.
O'Hanlon**
Partner

You are a corporate policyholder whose business has been decimated by COVID-19. You promptly tender a claim to your insurer under your policy for business interruption losses, and in response your insurer denies coverage several months later. You have decided to wait to see how courts ultimately rule on the various coverage issues posed by these claims, but the cases are ongoing and a year has passed since you first submitted your claim. How long can you wait to sue?

The answer: it varies. How long you can wait depends upon each policyholder's specific policy language and the law applicable to the insurance claim. Many policyholders wrongfully assume that the same deadlines to bring lawsuits in general apply to COVID-19 business interruption claims. In certain circumstances, they do not. For example, many commercial property policies—which contain business interruption coverage—have hidden contractual limitations periods that purport to require insureds to bring suit much sooner than would otherwise be required under applicable law.

For example, here is some sample contractual limitation language found in commercial property policies:

- “No suit, action or proceeding for the recovery of any claim will be sustained in any court of law or equity unless: ... Legal action is

RELATED PRACTICE AREAS

Commercial General Liability
Copyright, Trademark, and Media Liability
COVID-19 Resources
Credit and Mortgage Insurance
Directors and Officers Liability
Employment Practices Liability
Fidelity Bonds and Commercial Crime Policies
First-Party Property
Insurance Recovery and Counseling
Ocean Marine and Cargo Coverage
Professional Liability
Representations and Warranties
Workers' Compensation and Employers' Liability

RELATED TOPICS

Business Interruption Coverage
Insurance Losses

started within two years after inception of the loss.”

- “No suit, action or proceeding for the recovery of any claim under this Policy shall be sustainable in any court of law or equity unless... the suit is commenced within twelve (12) months after the date that the Company has made its final offer of settlement or denial of the loss.”

Further complicating the analysis are various tolling doctrines which, with or without the consent of the insurer, may extend the deadline to bring suit notwithstanding the above-referenced contractual limitations periods. For example, under the doctrine of equitable tolling, the period between submitting an insurance claim and the insurer’s denial of coverage is generally not counted toward the contractual period to sue.

In other words, if a policy has a one-year contractual limitation period and the insurer waits eight months after the submission of a claim to deny coverage, the deadline to sue would not run during that eight-month period. Insurers sometimes agree in writing to extend a contractual deadline to sue for various reasons.

Policyholders facing a decision whether to sue their insurers for COVID-19 business interruption losses should not assume that they have the standard deadlines to sue and should instead review their specific policies with coverage counsel to help determine their deadline for filing suit.