

ALERT

## Covid-19 Insurance Claims Update: Beware Contractual Limitations Periods

By Robert D. Chesler, Rhonda D. Orin and Pamela D. Hans

As the one-year anniversary of the COVID-19 pandemic approaches, policyholders with claims for business interruption losses must review their property insurance policies to determine if those policies contain a contractual limitations period for bringing suit. Unlike other types of insurance policies, most property policies contain such contractual limitations periods.

Depending on the wording of the policy, contractual limitations may (or may not) override state law on statutes of limitation. Determining this may require a review of the policy language, a review of the statutes of limitation in a particular state, and research to discern the controlling precedent.

### How Time Is Computed

Jurisdictions may differ on how they calculate the accrual of the limitations period. In New Jersey, for example, the period does not accrue until the insurance company categorically denies coverage; other states calculate from the date of loss. To be on the safe side, companies should calculate the period from the earliest date possible, for example, the date on which the company first incurred damages, or the date of the event that triggered the business interruption, typically the first lockdown order by the state.

### Limitations — May Be One Year

For commercial policies, the limitations period is often two years, but it can be as short as one year. Companies with one-year limitations periods can contact their insurance companies and ask for a tolling period in which to file suit, but there is no evidence that insurance companies are granting such extensions.

A one-year contractual limitations period may present challenges for policyholders seeking to protect their rights to business interruption caused by COVID-19. Many companies have chosen not to sue their insurance companies now, some preferring to wait until the law becomes

ANDERSON KILL  
1251 Avenue of the Americas  
New York, NY 10020  
(212) 278-1000

ANDERSON KILL  
1760 Market Street, Suite 600  
Philadelphia, PA 19103  
(267) 216-2700

ANDERSON KILL  
1055 Washington Boulevard, Suite 510  
Stamford, CT 06901  
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ANDERSON KILL  
Wells Fargo Building  
355 South Grand Avenue, Suite 2450  
Los Angeles, CA 90071  
(213) 943-1444

[www.andersonkill.com](http://www.andersonkill.com)





## who's who

### Robert D. Chesler

is a shareholder in Anderson Kill's New Jersey office and is a member of the firm's Cyber Insurance Recovery Group. Bob represents policyholders in a broad variety of coverage claims against their insurers and advises companies with respect to their insurance programs.

**rchesler@andersonkill.com**  
**(973) 642-5864**



**Rhonda D. Orin**, managing partner of Anderson Kill's Washington, D.C. office, represents policyholders in

high-stakes coverage cases nationwide. She has served as lead counsel in multiple jury and bench trials, argued before the highest courts of several states, and appeared in two cases before U.S. Supreme Court.

**rarin@andersonkill.com**  
**(202) 416-6549**



**Pamela D. Hans** is the managing shareholder of Anderson Kill's Philadelphia office. Her practice concentrates in the area of insurance coverage exclusively on behalf of policyholders. Her clients include utilities, mining companies, home builders, non-profit organizations, ethanol producers, commercial lenders, and hog processors, whom she has represented in disputes with their insurance companies.

**phans@andersonkill.com**  
**(267) 216-2720**

more settled. However, the law is far from settled and may remain in flux for months or years. In fact, lower courts have issued numerous decisions on COVID-19 insurance coverage, but those cases differ dramatically in their outcomes, often within the same jurisdiction. Cases exist that deny coverage for COVID-19 loss on grounds of both the virus exclusion and the lack of direct physical loss or damage, but policyholders have also scored impressive victories finding coverage in the face of those coverage defenses.

This legal morass may not be cleared for a long time, as the courts in each of the 50 states evaluate the factual and legal issues presented by these cases against the backdrop of their existing precedent about insurance coverage.

### What Policyholders Should Do Now

Policyholders should review their insurance policies to determine whether the policy contains a suit limitation provision. While these provisions are not universally enforced by the courts, policyholders should still assume that a court will enforce them. Policyholders with unresolved claims should act now to protect their rights to bring suit, including potentially seeking an extension of the limitation period. ▲

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