

# Back to Business

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## Upcoming Insurance Coverage Dispute Deadlines for COVID-19 Claims

As companies continue to grapple with the COVID-19 pandemic's impact on their businesses and the consequential loss of income suffered as a result of interruptions and/or shutdowns to their operations, policyholders should be aware of a number of key factors that could affect its ability to bring suit against its insurer.

### Suit Limitation Clauses

An important stipulation within first-party policies (property, business interruption, event cancellation, etc.) to be cognizant of are suit limitation clauses. First-party insurance policies typically contain a clause entitled "legal action against us" or "suit against us" that outlines time restrictions imposed by the policy in permitting suits to be brought to contest a coverage position. Such provisions can vary by policy, but may be as restrictive as limiting suits to be brought within one year of the inception of a loss.

### COVID-19 Claims

With March nearly upon us, the one-year anniversary of the unconstrained spreading of the COVID-19 virus is approaching. This may trigger the policy limitation restricting a policyholder's ability to bring suit to challenge an insurer's coverage position. Most policies are not terribly restrictive and flexibly afford a two to three year timeframe from inception of loss to bring suit. Nevertheless, each policy form may vary and must be reviewed to determine the actual terms and timeframe afforded by a particular policy. Being one day late can result in a total forfeiture of coverage.

### The Bottom Line

Vigilance in understanding the potential roadblocks and deadlines is key to ensuring rights to coverage under an insurance policy are preserved.

Neglecting and overlooking suit deadlines can mean the forfeiting of policy rights and a policyholder's ability to bring suit against its insurance carrier.

Consider negotiating a tolling provision with the insurance carrier to gain more time to consider your options.

Many policyholders submitted claims to their insurers and likely received declinations or coverage concessions of sub-limited affirmative grants of coverage that policyholders disagree with and do not accurately reflect the amount of the loss they believe should be covered. To date, over 1,400 suits have been brought, but many more policyholders may still be considering their options particularly in light of the recent Oklahoma State court decision in [\*Cherokee Nation et al. v. Lexington Insurance Company et al.\*](#) finding summary judgment for COVID-19 business interruption coverage.

Those that have either not submitted a claim or have submitted a claim and received coverage declinations or coverage concessions they did not concur with, may want to bring suit at a later date once they can determine and document the actual total loss of income they suffered and continue to suffer. Negotiating a tolling provision with a carrier to delay the trigger of the suit limitation clause is an option to buy more time. Being mindful of the policy suit limitation clause is critical in preserving a policyholder's right to bring suit to challenge an insurer's coverage position.

## State Statute of Limitations

In addition to the suit limitation clause on insurance policies, state statutes of limitations can potentially come into play as well. Although most state statutes of limitations are broader than insurance policy limitations and therefore may be preempted by the policy provisions, it would be prudent to be informed of a particular state's statute of limitation to ensure it will not affect a policyholder's ability to bring suit against its insurer.

## Enforceability of Insurance Policy Suit Limitations

State laws directed at the enforceability of insurance policy suit limitations are another factor to account for. Laws addressing suit limitation clauses can vary greatly by state, with some strictly enforcing the insurance policy limitation while others containing laws that override the policy limitation with their own specific statute.

Moreover, variations in state law abound with respects to the inception trigger of the suit limitation period. The clock can start as early as when the loss incepted to when a claim is denied by an insurer. This is further compounded by the neoteric nature of the COVID-19 virus itself and the factual complexities surrounding such claims. Determining the inception of the loss can be disputatious considering they are questions of first impressions thus far not addressed by courts.



LITIGATION

## For More Information

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Please contact the attorneys listed below or the D&G attorney with whom you have regular contact.

**Jesse B. Schneider**

*Partner*

212.468.4854

[jschneider@dglaw.com](mailto:jschneider@dglaw.com)

**Jack Schwartz**

*Special Insurance Counsel*

212.468.4802

[jschwartz@dglaw.com](mailto:jschwartz@dglaw.com)

