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## ISO Virus Exclusion – Drafting History

In 2006, the Insurance Service Office (“ISO”)<sup>1</sup> introduced a virus exclusion endorsement titled “Exclusion Of Loss Due To Virus Or Bacteria” endorsement, ISO Form CP 01 40 07 06 (“Virus Exclusion”). The Virus Exclusion was intended for inclusion in commercial property policies and it provides in pertinent as follows: “We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.”

In July 2006, ISO issued a circular to explain the reason for the Virus Exclusion, noting that “viral and bacterial contamination are specific types [of contamination] that appear to warrant particular attention at this point in time.” The 2006 ISO circular identifies examples of viral and bacterial contaminants that would fall within the Virus Exclusion, including “rotavirus, SARS, influenza (such as avian flu), legionella and anthrax” but it also notes that “[t]he universe of disease-causing organisms is always in evolution.” One of the viral contaminants listed, SARS (Severe Acute Respiratory Syndrome), is a strain of coronavirus that causes severe respiratory disease. SARS was responsible for an outbreak in 2002-2004 (just a few years before creation of the Virus Exclusion) that began in China and resulted in 8,096 confirmed cases and 774 deaths in 29 countries. Many experts have found that SARS and COVID-19 are caused by related strains of the coronavirus.

The 2006 ISO circular describes types of claims that potentially would fall within the Virus Exclusion including the cost to replace or decontaminate property and “business interruption (time element) losses.” It also indicates that the Virus Exclusion is intended to exclude coverage for such losses when caused by a pandemic:

While property policies have not been a source of recovery for losses involving contamination by disease-causing agents, *the specter of pandemic or hitherto unorthodox transmission of infectious material* raises the concern that insurers employing such policies *may face claims in which there are efforts to expand coverage and to create sources of recovery for such losses, contrary to policy intent*. In light of these concerns, we are presenting an exclusion relating to contamination by disease-causing viruses or bacteria or other disease-causing microorganisms. (Emphasis supplied.)

The 2006 ISO circular may assist insurers who are asking courts to apply the Virus Exclusion to losses arising from COVID-19. It also may assist the insurance industry in responding to recent legislative efforts to help policyholders bypass the Virus Exclusion when seeking coverage under commercial property policies for COVID-19 claims.

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<sup>1</sup> ISO, formed in 1971, is an advisory and rating organization for the property/casualty insurance industry that provides statistical and actuarial services, develops insurance programs and assists insurance companies in meeting state regulatory requirements.