

Client Alert

Insurers' COVID-19 Notepad: What You Need to Know Now (Week of April 20)

April 20, 2020

New Business Interruption Suits Against Insurers:

The owner/operator of a South Philadelphia restaurant sued Admiral Indemnity Company in the U.S. District Court for the Eastern District of Pennsylvania for coverage under an “all-risk” policy. In response to several government orders requiring the closure of “non-essential businesses,” plaintiff’s restaurant suffered business losses. Complaint at ¶¶ 26-32. Plaintiff asserts that the policy’s “Civil Authority” provision provides coverage for “the actual loss of business income sustained and the ... extra expenses incurred when access to the Insured Property is specifically prohibited by order of civil authority as the direct result of a covered cause of loss to property in the immediate area of Plaintiffs’ Insured Property.” *Id.* at ¶ 16. Plaintiff alleges that the policy’s “Exclusion of Loss Due to Virus or Bacteria” does not apply to the business losses incurred by Plaintiff.” *Id.* at ¶ 19.

In separate lawsuits, Mark Geragos and his law firm, Geragos & Geragos, sued Travelers Indemnity Company in California state court for coverage under “all-risk” policies. The Complaints allege that the policies cover business interruption losses sustained when access to the insured property is specifically prohibited by order of civil authority. Mr. Geragos alleges that he has been forced to “deal with unpaid rent and other related issues stemming from his tenants’ cessation of use” with respect to certain property. Mark Geragos Complaint at ¶¶ 17-19. The law firm alleges that, even though its business is exempted from the mayor’s order as an “essential business,” the order has “greatly limited” access to and conduct of business in connection with the Los Angeles property. Geragos & Geragos Complaint at ¶ 18. As a result, plaintiff “has been forced to deal with a substantial loss in business traffic and client/law related business activities.” *Id.* at ¶ 19.

The owner/operator of a small commercial business space in Montrose, California sued Travelers Indemnity Co. in California Superior Court for coverage under an “all-risk” policy. Plaintiff asserts coverage “is extended to apply to the actual loss of business income sustained and the actual, necessary and reasonable extra expenses incurred when access to the scheduled premises is specifically prohibited by order of Civil Authority as the direct result of a covered cause of loss to property in the immediate area of Plaintiff’s scheduled premises.” 2420 Honolulu Complaint at ¶ 11. Plaintiff alleges access to the insured property has been prohibited by the Los Angeles Mayor’s Executive Order No. 202.6 directing all “non-essential” businesses to be closed in response to the COVID-19 pandemic, and that it has been forced to “deal with unpaid rent and other related issues stemming from his tenants’ cessation of use” with respect to the property. *Id.* at ¶¶ 17-19.

A restaurant sued Travelers Indemnity Co. in California state court (Los Angeles County) seeking coverage under an “all-risk” policy for loss of business income. Plaintiff asserts coverage “is extended to apply to the actual loss of business income sustained and the actual, necessary and reasonable extra expenses incurred when access to

the scheduled premises is specifically prohibited by order of Civil Authority as the direct result of a covered cause of loss to property in the immediate area of Plaintiff's scheduled premises." Complaint at ¶¶ 12-13. Orders of the Mayor of Los Angeles and the Governor of California directing all non-essential businesses to be closed in Los Angeles and all residents of California "stay-at-home" allegedly resulted in damage to plaintiff's property, specifically, the shutdown of its business operations. *Id.* at ¶¶ 19-20.

The owner/operator of a commercial business center sued Travelers Indemnity Company of Connecticut in California Superior Court, seeking coverage under an "all-risk" policy for business interruption losses sustained as a result of government shutdown and "stay-at-home" orders issued in response to the COVID-19 pandemic. Plaintiff contends the policy's Civil Authority coverage part "is extended to apply to the actual loss of business income sustained and ... reasonable extra expenses incurred when access to the scheduled premises is specifically prohibited by order of Civil Authority as the direct result of a covered cause of loss to property in the immediate area of Plaintiff's scheduled premises." Complaint at ¶ 11. Plaintiff alleges "access to the Plaintiff's Insured Property (including all three of its underlying businesses) has been specifically prohibited". *Id.* at ¶ 18. As a result, plaintiff "has been forced to deal with unpaid rent and other related issues stemming from its tenants cessation of use with respect to the Insured Premises." *Id.* at ¶ 19.

A Chicago restaurant and bar sued Society Insurance, Inc. in Illinois state court. Plaintiff alleges orders that the State of Illinois and the City of Chicago issued to slow the spread of COVID-19 forced it to shut down its business. According to the complaint, the policy issued by Society Insurance provides coverage for loss of Business Income and Extra Expense due to the actions of a Civil Authority, which includes a directive by a government authority that forces an insured to close. Plaintiff alleges that the COVID-19 virus and pandemic have continued to cause covered loss and damage to its property, and that no policy exclusion applies.

Several plaintiffs sued Hartford Fire Ins. Co. in California state court (Santa Barbara County) for losses arising out of government issued shut-down and "stay-at-home" orders. Plaintiffs assert that Hartford has "effectively denied coverage" for business interruption losses by posting an "express position on its website that...coverage will not be available due to policy limitations and exclusions for viruses" Complaint at ¶ 35. According to the complaint, plaintiffs purchased an "all risk" "Special Multi-Flex Business Insurance Policy" which covers "the actual loss of Business Income [Plaintiffs] sustain and the actual, necessary and reasonable Extra Expense they incur due to the necessary interruption of their business operations...due to direct physical loss of or direct physical damage to property." *Id.* at ¶ 16. In addition, the policy allegedly provides civil authority coverage, which only requires "loss of access to Plaintiffs' insured locations." *Id.* at ¶ 17. Plaintiffs further allege that the policy's "Exclusion of Loss Due to Virus or Bacteria" is inapplicable because the policy allegedly "provides express coverage for business income and/or extra expense where business interruption is necessary due to loss or damage to property caused by fungus, wet rot, dry rot, bacteria or virus." *Id.* at ¶ 23. Plaintiffs assert causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing, declaratory relief, and violation of unfair competition laws.

A restaurant/nightclub sued Nationwide Property and Casualty Insurance Company in Tennessee state court (Davidson County) in response to defendant's alleged "wrongful denial of plaintiff's commercial insurance claim for losses and damages which were caused directly and/or indirectly by the recent pandemic." *Id.* at ¶ 1.

According to the complaint, a government-issued directive aimed at curbing the impact of COVID-19 forced the closure of plaintiff's business resulting in the loss of all its business income. *Id.* at ¶¶ 12-15. Plaintiff alleges that its "all-risk" policy provides coverage for "physical damage to Plaintiff's property and the business income loss and other related losses," *Id.* at ¶ 20, and that Nationwide denied plaintiff's claim on the grounds that any loss resulting from a virus and/or related to a closure by civil authority was excluded. *Id.* at ¶ 22. Plaintiff asserts several causes of action, including breach of contract, unfair claims practices, and bad faith denial.

The owner/operator of a retail shoe store sued Auto-Owners Insurance Company in the U.S. District Court for the Northern District of Alabama for losses arising out of the COVID-19 pandemic and government-imposed limitations on businesses. Plaintiff sought coverage for business interruption losses and other damages due to the civil authority action taken by the local government, as well as property damage losses caused by the "COVID-19 agent." Complaint at ¶ 19. Plaintiff alleges it is entitled to coverage for the claimed losses under the "all-risk" policy issued by defendant which allegedly provides "Business Income" and "Extra Expense" coverage. *Id.* at ¶ 15. Plaintiff asserts several causes of action, including breach of contract, negligence, bad faith, and institutional bad faith.

Two Florida restaurants brought a putative class action against Certain Underwriters of Lloyd's London for declaratory relief and damages for anticipatory breach of contract, seeking to recovery for losses arising from forced closure due to orders from state and local authorities. Plaintiffs allege Lloyds issued commercial property policies covering loss or damage to the covered premises resulting from "all risks other than those expressly excluded." Complaint at ¶¶ 28-29. According to Plaintiffs, the policies contain "Civil Authority" provisions providing coverage "for the actual loss of Business Income [Plaintiffs] sustain, and necessary Extra Expense caused by the action of civil authority that prohibits access to the described premises." *Id.* at ¶ 33.

The owner/operator of optometry and ophthalmologic centers in Ohio sued Twin City Fire Insurance Company in Ohio state court. Plaintiff alleges that Twin City "agreed to pay for actual loss of Business Income sustained by Plaintiff due to the necessary suspension of Plaintiff's operations...caused by direct loss of or physical damage to property at the Plaintiff's premises" (Complaint at ¶ 29), and that the policy also covers loss sustained "when access to Plaintiff's 'scheduled premises' is specifically prohibited by order of a civil authority as a direct result of a Covered Cause of Loss to property in the immediate area of Plaintiff's 'scheduled premises'." *Id.* at ¶ 34. According to the Complaint, Plaintiff's business has been forced to halt ordinary operations, resulting in substantial lost revenues and forcing Plaintiff to shut down operations and permanently lay off employees. *See id.* at ¶¶ 3, 5-9, and 10. The Complaint alleges that "[t]he continuous presence of COVID-19 on or around Plaintiff's premises has rendered the premises unsafe and unfit for their intended use and therefore caused direct physical property damage or physical loss under the Policy" (*id.* at ¶ 39), and substantial Business Income loss under the policy's Civil Authority coverage part (*id.* at ¶ 40-42).

A dental practice in Minnesota filed a class action complaint against Aspen American Insurance Co., in the U.S. District Court for the North District of Texas. Plaintiff alleges Aspen wrongfully denied its claim under an "all-risk" policy for losses suffered as a result of the COVID-19 pandemic and the related government closure orders. Plaintiff alleges that "Minnesota Emergency Executive Order Nos. 20-04, 20-09, 20-20 and 20-33[...] prohibited access to Plaintiff's and the other Class members' Covered Property, and the area immediately surrounding

Covered Property,” resulting in the constriction or suspension of the insureds’ business operations and related losses. Complaint at ¶ 43. Plaintiff alleges that the policy’s “Practice Income” (also referred to as “business interruption”) coverage covers “loss of Practice Income sustained due to the necessary suspension of practice...caused by direct physical damage.” *Id.* at ¶ 19. The “Civil Authority” provision is alleged to cover “the actual loss of practice income that Plaintiff sustains caused by action for civil authority that prohibit access to the Covered Property.” *Id.* at ¶ 24. Finally, Plaintiff alleges rights under the “Duties in the Event of Damage” provision, which requires an insured to “take all reasonable steps to protect the covered property from further damage by a covered cause of loss.” *Id.* at ¶ 25.

New State Legislative Action: Business Interruption

The Pennsylvania legislature has proposed [draft Senate Bill No. 1114](#), identified as the COVID-19 Insurance Relief Act. The draft bill seeks to establish coverage for losses related to business interruption that may otherwise be precluded by a “virus exclusion.” The bill provides that “[n]otwithstanding any other law, rule or regulation, a policy of insurance insuring against a loss related to property damage, including the loss of use and occupancy and business interruption, shall be construed to include among the covered perils coverage for loss or property damage due to COVID-19 and coverage for loss due to a civil authority order related to the declared disaster emergency and exigencies caused by the COVID-19 disease pandemic.” The bill would apply to active insurance policies effective prior to March 6, 2020 providing coverage against loss or damage to property, which includes the loss of use and occupancy, and business interruption in Pennsylvania.

New State Actions: COVID-19 And Workers Compensation:

On April 13, the Illinois Workers Compensation Commission [issued an emergency amendment](#) creating a rebuttable presumption that all front-line workers who are injured or incapacitated as a result of exposure to COVID-19 during a state of emergency are presumed to have been exposed to the disease in the course of their employment. Further, the injury will be presumed to be “causally connected to the hazards or exposures of the petitioner’s COVID-19 First Responder or Front-Line Worker employment.” The amendment expands the definition of “COVID-19 First Responder or Front-Line Worker” to a broad category of workers, including those in the following industries: grocery and pharmacy; food, beverage, and cannabis production; gas stations; financial institutions; mail, post, shipping, logistics, delivery, and pick-up services; and manufacture, distribution and supply chain for critical products and industries, among a number of others. The emergency rule will expire in 150 days absent any further action.

Utah enacted [legislation](#) amending its Workers’ Compensation Act by establishing, under certain circumstances, a rebuttable presumption that a first responder who contracts COVID-19 contracted the virus by accident during the course of performing the first responder’s duties as a first responder. The presumption “applies to a claim resulting from an accident arising out of and in the course of a first responder’s employment or service on or after March 21, 2020, and before June 1, 2021.”

New Insurance Commissioner Actions: All Insurers

California: On April 13, California Insurance Commissioner Ricardo Lara issued Bulletin 2020-3 requiring insurers to make an initial premium refund for the months of March and April to all California policyholders who have been “adversely affected” by misclassifications of risk due to the coronavirus. Commissioner Lara asserted that the “COVID-19 pandemic has severely curtailed activities of policyholders in both personal and commercial lines” resulting in projected loss exposures that have become “overstated or misclassified.” The Commissioner observed that this was especially true for premiums that are “based partly on measures such as number of miles driven, revenue, and payrolls which have all dropped significantly because of COVID-19.” Insurers that have issued private passenger auto, commercial auto, workers’ compensation, commercial multiple peril, commercial liability, and medical malpractice policies, as well as other lines of coverage where “measures of risk have become substantially overstated as a result of the pandemic,” must issue refunds to policyholders no later than August 11, 2020.

The California Insurance Commissioner’s order “grants each insurer reasonable flexibility in determining how best to quickly and fairly accomplish the refund of premium to policyholders,” and requires reports to the Department of Insurance by June 12, 2020 detailing actions taken, as well as contemplated future actions, to refund premiums in response to the Bulletin, including an explanation for the amount and duration of any premium refund. American Property Casualty Insurance Association President and CEO David Sampson said the California Department of Insurance should supply guidance to help insurers offer premium reductions in compliance with state Proposition 103, which stipulates that auto rates be based on driving record, yearly mileage and amount of driving experience. “If regulators allow insurers flexibility, private competitive markets will work to the benefit of consumers,” Sampson said.

New Jersey: The New Jersey Department of Banking and Insurance, following Executive Order No. 123, has directed insurers to provide an emergency grace period for the payment of insurance premiums due to the COVID-19 pandemic. The department specifically directed “health and dental insurance carriers...to provide a grace period for premium payments of at least 60 days.” Issuers of life insurance policies, property and casualty policies and insurance premium finance companies were directed to provide a grace period for payments of at least 90 days. Policyholders are required to contact their insurers in order to avail themselves to the emergency grace period.

COVID-19 and Auto Insurance:

In response to increasing public pressure for automobile insurers to issue premium offsets to policyholders due to the reduction in miles driven nationwide in the wake of the coronavirus pandemic, a number of insurers have announced that they will be providing refunds. Allstate Corp. announced it would refund more than \$600 million to its auto policyholders, with most of its customers receiving a 15% refund of their monthly car premiums for the months of April and May. American Family Mutual Insurance Co. will be refunding \$50 per insured vehicle for a total of \$200 million. Liberty Mutual will issue a 15% refund to auto insurance customers for two months of their annual premium, for a total refund of \$250 million to both Liberty Mutual and Safeco customers. Progressive Insurance announced it is providing approximately \$1 billion to its auto policyholders via a 20%

policy credit for April and May premiums. Travelers announced it is giving personal auto insurance customers a 15% credit on their April and May premiums. USAA will be returning \$520 million to its customers, with every member who had an auto insurance policy in effect as of March 31 receiving a 20% refund on two months of premiums in the coming weeks, and Next Insurance is reducing April premiums by 25% for its customers with commercial auto policies.

Rather than issue refunds, some insurers are offering credits on policies up for renewal. On April 7, GEICO announced that it will offer approximately \$2.5 billion in credits to its 19 million auto and motorcycle policyholders with policies up for renewal between April 8 and October 7, averaging \$150 per auto policy and \$30 per motorcycle policy. Chubb made a similar announcement on April 13, stating that it would provide its personal auto insurance clients with a credit on annual renewal premiums instead of issuing a refund. Upon policy renewal, clients will receive an automatic credit reflecting a 35% premium reduction for the months of April and May, for an expected credit of \$110 per vehicle, with additional discounts possible dependent upon the extent to which miles driven continue to be significantly reduced.

Additionally, in the second week of April, insurers began making announcements that they would extend coverage for customers making commercial deliveries during the pandemic. On April 8, Liberty Mutual announced that it would expand coverage for all personal auto policies to include protection for customers using their personal vehicles to deliver food and medicine. On April 9, it was reported that Travelers, USAA, and Progressive intend to expand coverage for personal auto customers temporarily delivering food or medicine as well, with Progressive also allowing commercial customers additional coverage options for delivery.

COVID-19: Insurer Financial Reports:

Fairfax Financial Holdings, Inc. expects to post a \$1.4 billion loss for the first quarter of 2020 due to coronavirus-related investment losses. This compares with a \$1.7 billion gain on investments in the first quarter of 2019.

Arch Capital Group Ltd. expects to see pre-tax losses across its property/casualty insurance and reinsurance segments of \$85 to \$95 million for claims incurred as of March 31 due to the coronavirus pandemic, net of reinsurance recoveries and reinstatement premiums. The company also expects pre-tax net losses of \$40 to \$50 million for its mortgage segment as a result of the financial stress created by the pandemic.

U.S. Congress:

Media reports indicate that “more than 20 conservative groups” penned a letter to Senate Majority Leader Mitch McConnell and House Speaker Nancy Pelosi asking Congress to enact “stronger liability protections” for industries that are “currently on the frontlines of the nation’s coronavirus response and relief efforts” to “create shields from trial lawyers’ frivolous, costly, and job-killing litigation schemes.” The letter reportedly warns that, absent protections, “[v]ital industries that support our economy could suffer catastrophic bankruptcies,” and “much of the innovation and capital needed to find cures, both to this disease and the economic devastation posed by it, will face significant delays.”

U.K. and Europe:

On April 15, Britain's Financial Conduct Authority (FCA) announced that despite the closure of many businesses due to the country's government mandated lock down, most insurance policies for small and medium-sized companies do not provide coverage for claims made in relation to the pandemic. In a letter to insurers, the watchdog agency noted that while lack of coverage "may be disappointing for the policyholder we see no reasonable grounds to intervene in such circumstances." However, where "it is clear that the firm has an obligation to pay out on a policy," the FCA stressed the importance of assessing and settling claims as quickly as possible, and instructed insurers to make interim payouts. Any insurer who disagrees with doing so is to inform the FCA of "the grounds for reaching that decision including how you believe it represents a fair outcome for customers."

A London-based public relations firm (Media Zoo) is reportedly considering a class action lawsuit on behalf of itself and "dozens" of businesses against Hiscox Insurance, challenging Hiscox's alleged refusal to pay civil authority business interruption claims related to the coronavirus despite what Media Zoo contends is "unambiguous" policy language. According to media reports, the Hiscox policies provide that business interruption claims can be made if a public authority makes the business premises unusable due to "an occurrence of any human infections or human contagion disease." Hiscox reportedly takes the position that such language applies only to "certain specific events at, or local to, the premises." Hiscox reportedly argues that, "like terrorism and flood, which have government-backed insurance schemes, pandemics like coronavirus are simply too large and too systemic for private insurers to cover." An April 15th statement by Hiscox indicates that approximately 10,000 of its small-business policyholders who purchased business interruption coverage have been affected by government-mandated closures, and that a realistic disaster scenario for its net losses incurred from the pandemic is \$175 million, which primarily includes claims arising from event cancellation, entertainment, and travel.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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