

CLIENT ALERT

Insurers' COVID-19 Notepad: What You Need to Know Now (Week of January 25)

January 26, 2021

Federal Court Dismisses COVID-19 Business Interruption Claim

On January 19, 2021, the district court for the District of New Jersey granted with prejudice Arch Insurance Company's motion to dismiss two minor league baseball team owners' COVID-19 business interruption claims. Finding that the stay-at-home orders were not enough for plaintiffs to allege facts showing their properties suffered physical damage, the court held the policies did not cover their losses. Order at 3–4. Additionally, the policies “clearly and explicitly” excluded coverage for loss arising from viruses, and the stay-at-home orders were “tied inextricably” to the coronavirus. *Id.* at 4.

Federal Court Certifies Question of Physical Loss to Ohio Supreme Court

On January 19, 2021, the federal district court for the Northern District of Ohio certified to the Supreme Court of Ohio the questions of whether the general presence of the coronavirus in the community, or on surfaces, constitutes direct physical loss or damage to property, and whether the presence of a person infected with COVID-19 constitutes direct physical loss or damage to property at that premises. The district court deferred consideration of a medical group's COVID-19 business interruption class action claim to “allow the Supreme Court of Ohio to decide these questions and bring uniformity to the application of state law to these policies.” Order at 4.

New Business Interruption Class Actions:

The owner of a dental practice in Washington state sued Truck Insurance Exchange on behalf of itself and all others similarly situated in state court (Thurston County), asserting claims for declaratory relief and breach of contract. The “all risk” policy allegedly provides business income, extended business income, extra expense, and civil authority coverage. Complaint at ¶¶ 10–14. The complaint alleges that the defendant wrongfully denied the plaintiff's claim for coverage without conducting a meaningful investigation, and that it “intends to deny or has denied coverage for other similarly situated members of the proposed class.” *Id.* at ¶¶ 50–53. The statewide class is divided into declaratory relief and breach of contract, as well as declaratory relief, extended business income, extra expense, and civil authority subclasses. *Id.* at ¶ 54.

Two storage companies sued Finger Lakes Fire & Casualty Company on behalf of themselves and a class in New York state court (Erie County) for breach of contract, declaratory relief, and misrepresentation under state law. The “all risk” policy allegedly provides business income and civil authority coverage and does not include a virus exclusion. Complaint ¶¶ 28, 40, 111. The complaint alleges the insurer wrongfully denied coverage without investigating the specific facts of the individual claims. *Id.* ¶¶ 82, 88, 90. The statewide class aims to represent all “all risk” policyholders who suffered business interruption losses that do not have a virus exclusion in their policies. *Id.* ¶ 97.

New Business Interruption Suits Against Insurers:

The owners of restaurants in the Seattle area sued National Surety Corporation in Washington state court (King County), asserting claims for declaratory relief, breach of contract, bad faith, violations of the state Consumer Protection Act, and violations of the state Insurance Fair Conduct Act. The “all risk” policy allegedly provides business income, extended business income, extra expense, civil authority, and crisis management coverage. Complaint at ¶¶ 27-46. The policy does not contain a virus exclusion. *Id.* at ¶¶ 47-49. The complaint alleges that the defendant wrongfully and in bad faith denied the plaintiffs’ claims for coverage, and incorrectly represented that the policy contained a disease exclusion in its denial letter. *Id.* at ¶¶ 84-92.

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

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