

CLIENT ALERT

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

July 23, 2020

FCA Business Interruption Test Case Begins Trial in UK:

The Business Interruption Insurance Test Case brought by Financial Conduct Authority has begun trial this week. The FCA has stated that “most policies [addressing business interruption] have basic cover and do not cover pandemics. Therefore there is no obligation for the insurer to pay out claims in relation to the coronavirus pandemic.” However, with respect to wordings which provide cover in principle for business interruption losses without the need for physical/property damage, it brought the test case obtain court declarations aimed at resolving the contractual uncertainty around the validity of many BI claims. A transcript of the first day’s proceedings can be found here.

Vermont Enacts Compensability Presumption for Workers’ Compensation Claims for Frontline Workers Diagnosed with COVID-19

On Monday, July 13, 2020, Vermont Governor Phil Scott signed into law a bill that provides a compensability presumption for workers’ compensation claims filed by frontline workers diagnosed with COVID-19. The presumption of compensability applies to claims for disability or death, provided that the frontline worker receives a positive test or diagnosis for COVID-19 from a licensed health care provider between March 1, 2020 and January 15, 2021. The legislation grants the state’s Workers’ Compensation Commission authority to extend deadlines or to temporarily amend or waive specific requirements of the state’s workers’ compensation law during the declared state of emergency for COVID-19. The presumption will not apply for workers with elevated risk of exposure to COVID-19 if it is shown by a preponderance of evidence that the disease was caused by a non-employment-connected exposure or risk factors. Vermont’s presumption will not apply for other workers exposed to COVID-19 for these same reasons or if it is proved by a preponderance of evidence that, at the time of exposure, the employee’s place of employment was in compliance with state health and safety guidelines related to COVID-19.

Ratings Agency Warns Insurers Face Up To \$91 Billion in COVID-19 Claims

Ratings agency Moody’s has warned that insurers worldwide could be hit with coronavirus-related claims of up to \$91 billion, with insurers providing coverage for events, travel interruptions, and business interruption facing the majority of the claims. Moody’s likened the pandemic to “a mid-sized natural catastrophe event” and found that, overall, the European insurance sector is “resilient” and will be able to absorb the financial losses generated by COVID-19, noting that the outbreak “has had an adverse, but manageable, impact on the European insurance sector, leading to a drop in company earnings rather than capital erosion.”

New Business Interruption Suits Against Insurers:

The owner of a restaurant in Pennsylvania sued Underwriters at Lloyd's, London and Main Line Insurance Offices, Inc. in Pennsylvania state court (Philadelphia County), asserting claims for breach of contract and the duty of good faith and fair dealing, bad faith, and negligent breach of contract. The policy at issue allegedly provides business income, extra expense, and food contamination coverage. Complaint at ¶¶13-14. The policy allegedly contained a virus exclusion that was removed by a "Restaurant and Platinum Enhancement Endorsement." *Id.* at ¶28.

The owner of a dental practice in Pennsylvania sued The Dentists Insurance Company in federal court (E.D. Pa.), asserting claims for declaratory relief and breach of contract. The "all risk" policy at issue allegedly provides loss of dental income, extra expense and civil authority coverage. Complaint at ¶¶23-37. The policy contains an exclusion for loss or damage caused by "viruses, bacteria or other microorganisms that cause or could cause physical illness, disease or disability..." *Id.* at ¶59.

The owner of a law practice in Philadelphia sued Selective Insurance Company of South Carolina in Pennsylvania state court (Philadelphia County), seeking a declaration that it is entitled to coverage under its policies for business losses and extra expense incurred as a result of the COVID-19 pandemic and subsequent state closure orders. The "all risk" policies at issue allegedly provide business income, extra expense, and civil authority coverage, and contain a virus exclusion.. Complaint at ¶¶10-11, 30. The Complaint alleges that as a result of state closure orders, the plaintiff was forced to close its offices and was unable to make further appearances in court, resulting in a substantial diminishment of business. *Id.* at ¶¶21-23.

The owner of a bowling alley in Philadelphia sued Everest National Insurance Company and Specialty Insurance Group in federal court (E.D. Pa.), seeking a declaration that its insurance policy provides coverage for any current, future and continued closures of non-essential businesses due to physical loss or damage resulting from the coronavirus and/or subsequent civil authority orders. The "all risk" policy allegedly provides business income, extra expense, contamination, and civil authority coverage. Complaint at ¶¶18-21. The policy contains an exclusion 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." *Id.* at ¶32. The Complaint alleges that the defendant rejected the plaintiff's business interruption claims for coverage in violation of their policies. *Id.* at ¶¶14-15.

The owner of a bridal shop in Pennsylvania sued Farmers Insurance Group in federal court (E.D. Pa.), seeking a declaration that its insurance policy provides coverage for any current, future and continued closures of non-essential businesses due to physical loss or damage resulting from the coronavirus and/or subsequent civil authority orders. The "all risk" policy allegedly provides business income, extra expense, civil authority, and contamination coverage. Complaint at ¶¶17-21. The policy contains an exclusion that applies to "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." *Id.* at ¶31. The Complaint alleges that the defendant denied the plaintiff's claim for coverage on the basis of the virus exclusion and that the plaintiff did not suffer physical damage to the property. *Id.* at ¶¶13-14.

The owner of a bar and restaurant in Pennsylvania sued Utica First Insurance Company in federal court (E.D. Pa.), seeking a declaration that its insurance policy provides coverage for any current, future and continued closures of non-essential businesses due to physical loss or damage resulting from the coronavirus and/or subsequent civil authority orders. The "all risk" policy allegedly provides business income, extra expense, civil authority, and contamination coverage. Complaint at ¶¶17-21.

The policy contains an exclusion that applies to “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.” *Id.* at ¶31. The Complaint alleges that the defendant denied the plaintiff’s claim for coverage based on the policy’s virus exclusion and on the basis that there was no physical damage to the property. *Id.* at ¶¶13-14.

The owner of a bar and restaurant in Pennsylvania sued Axis Insurance Company in federal court (E.D. Pa.), seeking a declaration that its insurance policy provides coverage for any current, future and continued closures of non-essential businesses due to physical loss or damage resulting from the coronavirus and/or subsequent civil authority orders. The “all risk” policy allegedly provides business income, extra expense, civil authority, and contamination coverage. Complaint at ¶¶19-24. The policy contains an exclusion that applies to “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.” *Id.* at ¶31. The Complaint alleges that the defendant denied the plaintiff’s claim for coverage based on the policy’s virus exclusion and on the basis that there was no physical damage to the property. *Id.* at ¶¶13-14.

The owner of a cosmetic surgery practice in Pennsylvania sued Hartford Financial Services Group and Twin City Fire Insurance Company in federal court (E.D. Pa.), asserting claims for declaratory relief and breach of contract. The “all risk” policy allegedly provides business income, extra expense, and civil authority coverage. Complaint at ¶¶23-25. The policy contains an exclusion for “loss or damage caused directly or indirectly” by virus. *Id.* at ¶69. The Complaint alleges that the defendants wrongfully denied the plaintiff’s claim for coverage, and that they will continue to deny all claims under their “all risk” policies, that these denials have left the plaintiff and similarly situated businesses without vital coverage, and that they received the benefit of an exclusion for which their insureds received no benefit. *Id.* at ¶¶91-93, 103-104.

The owners of the NBA basketball team, the Houston Rockets, and their arena sued Affiliated FM Insurance Company in Rhode Island state court (Providence County), asserting claims for declaratory relief, breach of contract, and bad faith. The “all risk” policy allegedly provides business income, extra expense, civil authority, attraction property, ingress/egress, and communicable disease coverage. Complaint at ¶¶10-16. The policy also excludes coverage for “contamination,” defined as “any condition of property due to the actual or suspected presence of any foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen, or pathogenic organism, bacteria, virus, disease causing or illness causing agent, fungus, mold, or mildew.” *Id.* at ¶95. The Complaint alleges that as a result of the COVID-19 pandemic and subsequent state closure orders, the arena has been forced to cancel or postpone future events. *Id.* at ¶¶34-39. The Complaint further alleges that the defendant wrongfully denied the plaintiff’s claim for coverage in bad faith “based on an apparent systematic company practice designed to minimize payments for covered COVID-19 claims.” *Id.* at ¶70.

The owner of a restaurant in Nashville sued Admiral Insurance Company in Tennessee state court (Davidson County), asserting claims for declaratory relief and breach of contract. The “all risk” policy allegedly provides business income, extra expense, and civil authority coverage. Complaint at ¶¶23-33. The policy also contains an Exclusion of Loss Due to Virus or Bacteria, which states that the defendant “will not pay for loss or damage caused by or resulting from any virus” *Id.* at ¶47. The Complaint alleges that the defendant wrongfully denied the plaintiff’s claim for coverage without conducting an investigation, and that “[t]he speed with which Defendant denied these claims indicate that Defendant already decided and put into place procedures for the blanket denial of claims, regardless of the particular facts of any given insured restaurant.” *Id.* at ¶¶7-8.

The owner of a hotel and restaurant in Austin sued Seneca Insurance Company, Inc. in Texas state court (Travis County), asserting claims for breach of contract, noncompliance with the Texas Insurance Code, and breach of the duty of good faith and fair dealing. The policy allegedly provides business income and extra expense coverage. Complaint at ¶¶6. The policy contains an exclusion for “virus or bacteria.” *Id.* at ¶¶17. The Complaint alleges that the defendants wrongfully denied the plaintiff’s claim for coverage without conducting a proper investigation. *Id.* at ¶¶7, 15.

A federally recognized Native American Tribe and the owner of various business properties sued its insurers in Washington state court (Snohomish County), asserting claims for breach of contract, negligence, violation of the state Consumer Protection Act, and declaratory relief. The “all risk” policies allegedly provide business interruption insurance. Complaint at ¶¶15, 27. The Complaint alleges that none of the policies allegedly an applicable virus exclusion, but that the defendants belatedly and deceptively attempted to modify the policies through the inclusion of a virus exclusion. *Id.* at ¶¶24, 45-47. The Complaint further alleges that the defendants developed a strategy to resist claims for business interruption insurance caused by COVID-19, acted in concert with one another to refuse insurance benefits to the plaintiffs, and invested monies which would otherwise be paid as policy benefits into the defendants’ own account. *Id.* at ¶¶69-71.

An art gallery owner sued Sentinel Insurance Company in federal court (N.D. Cal.) alleging the insurer wrongfully denied its claim for business interruption losses due to California and Nevada’s COVID-19 closure orders. The complaint alleges the “all risk” policy provides Business Income, Extra Expense, Civil Authority, and Sue and Labor coverage, and brings causes of action for breach of contract, declaratory judgment, and bad faith. The complaint alleges that the policy is modified by a Virus Endorsement “which expressly provides coverage for losses caused by fungi, bacteria, or viruses,” and that “any reading of the [policy] and the Endorsement that does not provide coverage for losses due to COVID-19 would render [the policy] an illusory contract.” The gallery owner further alleges that Sentinel “failed to investigate” its claim despite the California Department of Insurance’s notice requiring insurance companies to “comply with the contractual, statutory, regulatory, and other legal obligations and fairly investigate all business interruption claims caused by COVID-19.”

Global Gaming RP, LLC sued Steadfast Insurance Company in Oklahoma state court (Pontotoc County) seeking coverage under an “all-risk” policy for COVID-19 related business interruption losses. Plaintiff alleges as a result of the pandemic the insured property “sustained direct physical loss or damage.” Complaint at ¶9. The Complaint asserts the policy’s “time element interruption, extra expense, interruption by civil authority, limitations on ingress and egress, and expenses to reduce loss” coverage provisions apply to the submitted claim. *Id.* at ¶9.

Benny’s Famous Pizza Plus sued Security National Insurance Company seeking coverage for business interruption losses due to government orders issued in response to the pandemic. The Complaint alleges that Plaintiff, as a “non essential” business, has sustained losses due to the state and local government orders issued in response to COVID-19. Complaint at ¶¶18-21. Plaintiff alleges the policy’s Business Income, Extra Expense, and Civil Authority provisions provide coverage for the submitted losses.

The owner of a rental property sued Wesco Insurance Company seeking coverage for the loss of rental income due to the state and local government orders issued in response to COVID-19. Complaint at ¶¶19-22. Plaintiff alleges the policy’s Business Income, Extra Expense, and Civil Authority provisions provide coverage for the submitted losses, and the policy’s virus exclusion does not apply.

Children’s clothing store Denny’s sued The Ohio Casualty Insurance Company in federal court (E.D.N.Y.) alleging it was required to shut its doors and lay off its entire staff as a result of the government orders issued in response to COVID-19. Complaint at

¶157. Plaintiff alleges that the “all-risk” policy’s Business Income, Extra Expense, and Civil Authority coverage provisions cover the claimed losses, and that the policy’s virus exclusion is not applicable, as the loss was “caused by the entry of Civil Authority Orders.” *Id.* at ¶139.

Retailer Kiton sued Chubb Ltd. and Pacific Indemnity Co. in New York state court (New York County) seeking coverage for business interruption losses due to government closure orders. The Complaint asserts Plaintiff was required to close its clothing boutiques, which were deemed “non-essential,” in response to government closure orders in California, Texas, Nevada, Florida, and New York. Complaint at ¶19. Plaintiff alleges the policy’s Business Income, Extra Expense, and Civil Authority provisions provide coverage for the sustained losses, and that Defendants wrongfully denied the submitted claim.

Salon Snip-Its filed a declaratory action against Hanover Insurance Group and Massachusetts Bay Insurance Company in federal court (N.D.N.Y.) seeking coverage for business losses arising from COVID-19. Plaintiff alleges it was required to close on March 20, 2020 due to “state and local orders mandating that all non-essential in-store businesses must shut down.” Complaint at ¶12. The Complaint asserts the “all-risk” policy provides coverage for the losses under the Business Income, Extra Expense, and Civil Authority coverage provisions. Plaintiff asserts the policy’s virus exclusion does not apply, as “Plaintiff’s losses were caused by the entry of Civil Authority Order.” *Id.* at ¶138.

A children’s clothing retailer sued Continental Casualty Co. in federal court (D. N.J.) alleging it was required to shut its doors and lay off its entire staff as a result of the government orders issued in response to COVID-19. Complaint at ¶156. Plaintiff alleges that the “all-risk” policy’s Business Income, Extra Expense, and Civil Authority coverage provisions cover the claimed losses, and that the policy’s virus exclusion is not applicable, as the loss was “caused by the entry of Civil Authority Orders.” *Id.* at ¶138.

Rockleigh County Club sued Hartford Insurance Group in New Jersey state court (Bergen County) alleging the insurer wrongfully denied its claim for business interruption losses caused by the COVID-19 pandemic and related government orders, which required Plaintiff to close the insured property. The Complaint alleges the “all-risk” policy provides coverage for the sustained losses under the Business Income, Extra Expense, Civil Authority, Future Earning, Ingress and Egress, and Extra Expense and Expediting Expenses provisions. Complaint at ¶¶20-26. Plaintiff contends “Hartford’s denial of coverage is made in bad faith and is fraudulent.” *Id.* at ¶136.

Vickies Diner sued Capital Insurance Group in Nevada state court (Clark County) seeking coverage for COVID-19 related business losses. Plaintiff alleges the “all-risk” policy provides coverage for business interruption loss, extra expense, and loss due to the actions of a civil authority. The Complaint alleges that the plaintiff was “prevented from operating, earning income, paying salaries, and paying debts” due to the government orders issued in response to the COVID-19 pandemic (Complaint at ¶¶54-55), and that the insurer allegedly wrongfully denied Plaintiff’s claim.

The Cordish Companies, Inc. sued Affiliated Insurance Company in Maryland state court (Baltimore City) alleging that it has suffered business interruption losses due to government closure orders issued in response to the pandemic, and damage to Covered Properties under the policy. Plaintiff alleges the “all-risk” policy provides coverage under the Business Interruption, Extra Expense, Attraction Property, Civil Authority, Supply Chain, and Rental Income provisions. The Complaint seeks declaratory relief and damages in connection with a claim for breach of contract.

A Michigan deli sued Farm Bureau General Insurance Company of Michigan in Michigan state court (Wayne County) seeking coverage for business losses resulting from orders issued by state and local governments in response to the pandemic. Plaintiff

alleges it was required to alter its operations in response to the orders issued by the Michigan Governor, and suffered business losses as a result. Complaint at ¶¶16-24. The Complaint asserts the policy provides coverage for the sustained business interruption losses and losses due to the actions of civil authorities, but that the insurer wrongfully denied its claim. *Id.* at ¶¶37-43.

Tony Williams Dance Center sued Hartford Fire Insurance Company in federal court (D. Mass.) alleging it was required to close the Insured Premises in response to Civil Authority Orders issued by state and local governments. Complaint at ¶48. Plaintiff alleges the “all-risk” policy provides coverage for Business Income, Extra Expense, and the actions of civil authorities, and notes the term “virus” from the Limited Fungi, Bacteria or Virus Coverage form was deleted by the Massachusetts Changes endorsement. *Id.* at ¶¶31-33. The Complaint seeks declaratory relief and damages in connection with claims for breach of contract and statutory bad faith.

The Kenmore Army Navy Store of Boston sued Travelers Casualty Insurance Company in federal court (D. Mass.) alleging that it has sustained covered losses as a result of the closure and “stay at home” orders issued by civil authorities in response to the coronavirus. Complaint at ¶¶25-26. The Complaint asserts the “all-risk” policy provides Extended Business Income, Extra Expense, Business Income from Dependent Properties and Civil Authority coverage, and no applicable exclusion applies. *Id.* at ¶¶10-14. Plaintiff seeks damages in connection with claims for breach of contract and bad faith.

Photography studio Elevel Studios sued Travelers Casualty Insurance Company of America in federal court (D. Mass.) alleging it has suffered covered loss under the policy due to the actions of civil authorities precluding access to the Insured Property. Complaint at ¶26. The Complaint asserts the “all-risk” policy provides Extended Business Income, Extra Expense, Business Income from Dependent Properties and Civil Authority coverage, and no applicable exclusion applies. The Complaint seeks damages in connection with claims for breach of contract and bad faith.

Galatoire’s Restaurant sued U.S. Specialty Insurance in federal court (E.D. La.) seeking coverage for COVID-19 related losses under the policy. The Complaint alleges an employee of Plaintiff’s worked on the Insured Property while unknowingly “extensively shedding...COVID-19 in the weeks leading up to March, 17, 2020...,and accidentally and extensively” contaminating food, drinks, and items on the property. Complaint at ¶44. The Complaint alleges, as a result of the sick employee, “guests were served Insured Products that were contaminated.” *Id.* at ¶47. Plaintiff alleges the policy Accidental Contamination coverage provision provides coverage for the claim wrongfully denied by the insurer. The Complaint seeks declaratory relief and damages in connection with claims for breach of contract and statutory bad faith.

A New Orleans orthopedic practice sued American Casualty Co. of Reading PC in federal court (E.D. La.) seeking coverage for business interruption losses related to the COVID-19 pandemic. Plaintiff alleges in response to the actual or highly likely threatened presence of COVID-19 on Plaintiff’s premises, it suspended operations in whole or in part. Complaint at ¶¶12-13. The Complaint alleges that the insurer wrongfully denied the claim “based upon an unsupportable interpretation of its own policy.” *Id.* at ¶17.

Wild Eggs sued State Auto Property & Casualty Insurance Co. in federal court (W.D. Ky.) alleging several restaurant locations were required to adjust operations or close in response to government orders issued in Kentucky, Indiana, and Ohio designed to stem the spread of the novel coronavirus. The Complaint asserts the policy’s “Restaurant Extension Endorsement expressly adds coverage for a loss of business income due to a government order to suspend operations because of actual or alleged exposure to a contagious or infectious disease.” Complaint at 2. Plaintiff also alleged the policy’s Extended Business Income coverage

provision responds to the submitted loss. Plaintiff seeks declaratory relief and damages in connection with claims for breach of contract, deceptive and misleading advertising, and bad faith.

A Colorado Hampton Inn sued Liberty Mutual Insurance Company in Kansas state court (Johnson County) seeking coverage for business interruption losses due to closure orders issued in response to the COVID-19 pandemic. Plaintiff alleges the “all-risk” policy’s Business Income, Extra Expense, and Civil Authority coverage provisions respond to the submitted claim. The Complaint asserts the policy’s virus exclusion does not apply as the losses were caused by “cautionary measures taken by the State of Colorado and other government authorities to prevent the spread of COVID-19 in the future.” Complaint at ¶34. Plaintiff seeks declaratory relief and damages in connection with claims for breach of contract and anticipatory breach of contract.

A restaurant sued White Pine Insurance Company in Florida state court (Broward County), asserting claims for declaratory relief and breach of contract. The “all risk” policy at issue allegedly provides business income, extra expense, and civil authority coverage. Complaint at ¶ 27. The Complaint alleges that the insurer’s position that there has been no direct physical loss to property is incorrect because COVID-19 is “a cause of real physical loss and damage as it is physically affecting public and private property and physical spaces around the world, including in Broward County and Cooper City, Florida,” and that, while the policy contains a virus exclusion, “the policy language provides no exclusion for a pandemic such as the COVID-19 pandemic which has affected the entire globe including Plaintiff’s business operations.” *Id.* at ¶ 35.

A restaurant sued Greenwich Insurance Company in Florida state court (Hillsborough County alleging that damage to the insured property and to property within a mile of insured property occurred “when access to both were prohibited” by civil authority orders, Complaint at ¶ 31, and that the policy’s virus exclusion does not apply because it “was only meant to exclude the cost of damages to either the insured locations or the insured’s products when a virus specifically infected the insured locations.” *Id.* at ¶ 46.

The owner and operator of a Florida restaurant sued Certain Underwriters at Lloyd’s, London in federal court (S.D. Fla.) for declaratory relief. The “all risk” policy at issue allegedly provides business personal property, business income, extra expense, and contamination coverage. Complaint at ¶ 14. The Complaint alleges that the COVID-19 pandemic “caused direct physical loss of or damage to the Covered Property under the Policy by denying use of and damaging the Covered Property and by causing a necessary suspension of operations during the period of restoration,” *id.* at ¶ 27, and “caused physical damage to the inventory of Plaintiff’s business, such as foodstuffs, and creates a high and dangerous risk of such injury to the same.” *Id.* at ¶ 70. The policy’s virus exclusion is alleged to have been “fraudulently adopted, adhesionary, and unconscionable.” *Id.* at ¶ 36.

The operator of a children’s clothing store sued International Catastrophe Insurance Managers, LLC in federal court (S.D. Fla.), asserting claims for declaratory relief and breach of contract. The “all risk” policy allegedly provides business personal property, business income, extra expense, contamination, and civil authority coverage. Complaint at ¶¶ 13, 14. The Complaint alleges that the COVID-19 pandemic “caused direct physical loss of or damage to the Covered Properties under the Policy by denying use of and damaging the Covered Properties and by causing a necessary suspension of operations during the period of restoration” and “render[ed] the Covered Properties unsafe, uninhabitable, or otherwise unfit for their intended use, which constitutes direct physical loss.” *Id.* at ¶ 27.

The owners and operators of several restaurants sued Illinois Union Insurance Company and Chubb National Insurance Company in federal court (S.D. Fla.) for breach of contract. The “all risk” policy allegedly provides business interruption and extra expense coverage. Complaint at ¶ 72-79. The Complaint alleges that direct physical loss was “caused by or resulted from the emergency

[closure] orders.” *Id.* at ¶ 92. The insurers are alleged to have “adopted a ‘company line’ to deny all business interruption claims similar to Plaintiffs’, despite different circumstances, different executive orders, and differences in policies that can make or break coverage.” *Id.* at ¶ 24.

The owner and operator of a film and photography studio sued Travelers Casualty Insurance Company of America in federal court (D. Mass.), asserting claims for breach of contract, breach of the covenant of good faith and fair dealing, and violation of M.G.L. c. 93A § 11. The “all risk” policy allegedly provides business interruption, extra expense, business income from dependent properties, and civil authority coverage. Complaint at ¶¶ 9-13. The Complaint alleges that there has been direct physical loss of and/or damage to property “by, among other things, the property being damaged, access to the property being denied, customers being prevented from physically occupying the property, the property being physically uninhabitable by customers, the function of the property being nearly eliminated or destroyed, and/or a suspension of business operations occurring at the property.” *Id.* at ¶ 26.

The owner and operator of a clothing store sued Travelers Casualty Insurance Company of America in federal court (D. Mass.), asserting claims for breach of contract, breach of the covenant of good faith and fair dealing, and violation of M.G.L. c. 93A § 11. The “all risk” policy allegedly provides business income, extra expense, extended business income, business income from dependent properties, and civil authority coverage. Complaint at ¶ 9-13. The Complaint alleges there has been direct physical loss of and/or damage to property by “the property being damaged, access to the property being denied, customers being prevented from physically occupying the property, the property being physically uninhabitable by customers, the function of the property being nearly eliminated or destroyed, and/or a suspension of business operations occurring at the property.” *Id.* at ¶ 26.

The operator of a dance school sued Hartford Fire Insurance Company in federal court (D. Mass.), asserting claims for declaratory relief, breach of contract, and unfair claims settlement practices. The “all risk” policy allegedly provides business income, extra expense, and civil authority coverage. Complaint at ¶ 18. The Complaint alleges that the insured premises was “physically impacted by actual COVID-19 contamination and/or the probability of COVID-19 contamination and Civil Authority mitigation efforts,” *id.* at ¶ 51, and that the “Civil Authority Orders prohibiting access to property are a result of damage to property and the dangerous conditions resulting from that damage.” *Id.* at ¶52. The policy’s “Limited Fungi, Bacteria or Virus” exclusion allegedly does not apply because a “Massachusetts changes” endorsement modified the exclusion by deleting the term virus therein and therefore “it means that losses caused by viruses are affirmatively covered under the Policy.” *Id.* at ¶¶ 31-33.

A restaurant sued Cincinnati Insurance Company in Ohio state court (Cuyahoga County) for declaratory relief. The “all risk” policy allegedly provides business income, extra expense, and civil authority coverage. Complaint at ¶ 5. The Complaint alleges that the “presence of people infected with or carrying SARS-CoV-2 particles at premises renders the premises, including property located at the premises, unsafe, resulting in direct physical loss to the premises and property.” *Id.* at ¶ 27. The restaurant seeks a declaration that: (1) it sustained direct physical loss or damage as a result of the coronavirus pandemic; (2) coronavirus is a covered cause of loss; (3) losses incurred as a result of the executive orders issued by the Governor of Ohio are covered losses; (4) the insurer cannot prove the application of any exclusion or limitation; (5) it is entitled to coverage for its business income and extra expense loss; (6) it is entitled to coverage for loss due to the actions of Ohio’s civil authorities; (7) it has coverage for any substantially similar civil authority order in the future; and (8) any other issue that may arise during the course of litigation that is a proper issue on which to grant declaratory relief. *Id.* at ¶ 56.

The owner and operator of a dental office sued Cincinnati Insurance Company in Ohio state court (Cuyahoga County) for declaratory relief. The “all risk” policy allegedly provides business income, extra expense, and civil authority coverage. Complaint at ¶ 5. The Complaint alleges that “it is probable that [the] insured premises have sustained direct physical loss and/or damage due to the presence of SARS-CoV-2, and has unquestionably sustained direct physical loss at those locations as the result of the Pandemic and/or civil authority orders issued by the Governor of Ohio.” *Id.* at ¶ 59.

Several event planning companies sued Cincinnati Insurance Company in Ohio state court (Cuyahoga County) for declaratory relief. The “all risk” policy allegedly provides business income, business income from dependent properties, extra expense, and civil authority coverage. Complaint at ¶ 6. The Complaint alleges that the “presence of people infected with or carrying SARS-CoV-2 particles renders physical property in their vicinity unsafe and unusable, resulting in direct physical loss to that property.” *Id.* at ¶ 40.

A restaurant sued Cincinnati Insurance Company in Ohio state court (Cuyahoga County) for declaratory relief. The “all risk” policy allegedly provides business income, extra expense, and civil authority coverage. Complaint at ¶ 5. The Complaint alleges that it “is probable that [the] insured premises have sustained direct physical loss or damage due to the presence of SARS-CoV-2, and has unquestionably sustained direct physical loss of and at those locations as the result of the Pandemic and/or civil authority orders issued by the Governor of Ohio.” *Id.* at ¶ 57.

A metal fabrication company sued Cincinnati Insurance Company in Ohio state court (Cuyahoga County) for declaratory relief. The “all risk” policy allegedly provides business income, extra expense, and civil authority coverage. Complaint at ¶ 5. The Complaint alleges that the coronavirus renders physical property “unsafe and unusable, resulting in direct physical loss to that property,” *id.* at ¶ 32, and that it “is probable that [plaintiff’s] insured premises have sustained direct physical loss or damage due to the presence of SARS-CoV-2.” *Id.* at ¶ 57.

New Business Interruption Class Action Filings:

The owner of a hair salon in Pennsylvania sued Ace Fire Underwriters Insurance Company in federal court (E.D. Pa.) on behalf of itself and all others similarly situated, seeking a declaration that the insurance policy provides coverage for any current and future closures of businesses such as the plaintiff’s due to physical loss or damage from the coronavirus and/or the pandemic, and provides business income coverage in the event the virus has caused a loss or damage at the insured properties. The “all risk” policy at issue allegedly provides business income, extra expense, civil authority, and contamination coverage. Complaint at ¶¶17-24. The policy contains an exclusion that applies to “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.” *Id.* at ¶31. The Complaint alleges that the defendant denied the plaintiff’s claim for coverage. *Id.* at ¶42. The class is defined as “[a]ll insured by [the defendant] who have been denied business interruption coverage for lost income and/or extended expenses as a result of Civil Authority Orders issued in response to the COVID-19 pandemic.” *Id.* at ¶67.

Marra’s Restaurant & Pizzeria filed a class action complaint against Twin City Fire Insurance Company in federal court (D. N.J.) seeking coverage for business losses resulting from government orders issued in response to COVID-19. Plaintiff, on behalf of itself and all persons and entities holding a property insurance policy issued by Defendant that suffered a suspension of business due to COVID-19 and related Closure Orders, seeks coverage under the “all-risk” policy’s Business Income, Extra Expense, Civil Authority, and Business Income from Dependent Properties provisions. Complaint at ¶¶4-10. The Complaint asserts “as a result

of the presence of COVID-19 and the Closure Orders, Plaintiff and the other Class members” incurred covered losses and, in response, Twin City has “on a wide scale basis refused to provide Business Income and Extra Expense, Civil Authority, and Business Income from Dependent Properties coverage due to COVID-19” and related closure orders. *Id.* at ¶¶37, 40. The class complaint seeks declaratory relief and damages in connection with claims for breach of contract.

New Jersey restaurant Hanover Manor filed a class action complaint against Hanover Insurance Group and Citizens Insurance Company of America in federal court (D. N.J.) seeking coverage for COVID-19 related business interruption losses. Plaintiff, on behalf of itself and members of the class, seeks coverage under the “all-risk” policy’s Business Income, Extra Expense, and Civil Authority coverage provisions. Complaint at ¶¶36-40. The Complaint asserts the policy’s virus exclusion is not applicable as the losses were a result of “precautionary measures taken by...States and/or counties to prevent the spread of COVID-19 in the future.” *Id.* at ¶44. The Complaint seeks declaratory relief and damages in connection with claims for breach of contract.

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

Laura Foggan

Partner – Washington, D.C.
Phone: +1.202.624.2774
Email: lfoggan@crowell.com

Mark Meyer

Partner – London
Phone: +44.20.7413.1326
Email: mmeyer@crowell.com

Adam J. Singer

Associate – Washington, D.C.
Phone: +1.202.688.3508
Email: asinger@crowell.com