

CLIENT ALERT

Insurers' COVID-19 Notepad: What You Need to Know Now (Week of July 27)

Jul.30.2020

JPML Hears Argument on BI Claim Centralization Motions

On July 30, 2020, the [Joint Panel on Multidistrict Litigation](#) heard oral argument via videoconference on motions to centralize business interruption cases into a single MDL, or alternatively into a series of insurer-specific MDLs or into a series of state-wide MDLs. A ruling in MDL NO. 2942 – IN RE: COVID-19 BUSINESS INTERRUPTION PROTECTION INSURANCE LITIGATION is expected in the coming weeks. Plaintiffs took varied positions supporting different means of centralization or no centralization, whereas defendant insurers universally opposed centralization of any type.

Pennsylvania Court Of Common Pleas Orders Ongoing COVID-19 Business Interruption Cases To Be Coordinated

In Pennsylvania, Allegheny County Court of Common Pleas Judge Christine A. Ward [granted](#) Plaintiff restaurants' joint motion for coordination of COVID-19 business interruption lawsuits, and ordered that ongoing cases from Allegheny County, Philadelphia, Lancaster County, and any future Pennsylvania state-court suits against Erie Insurance Exchange for coverage for losses due to COVID-19 are to be coordinated before her.

COVID-19 Claims Take Center Stage in London Insurance Dispute

The Financial Conduct Authority's (FCA) test case brought on behalf of aggrieved insurance policyholders in London was slated to finish an eight day trial this week with closing submissions. The ruling in the case is expected to affect approximately 370,000 policyholders of more than 20 insurance companies that provide business income (interruption) insurance in the UK.. At issue are a number of policy wordings that are not tied to a physical damage requirement. The FCA has published [guidance](#) setting out its expectation that, following final resolution of the test case (including any appeals), insurers should apply the judgment in (re-)assessing all outstanding or rejected claims and complaints which may be affected by the test case (except complaints that have been referred to the Financial Ombudsman Service).

GEICO Sued For Excessive Auto Premiums Charged During Pandemic

A Chicago resident filed a [class action complaint](#) against three GEICO affiliates in federal court (N.D. Ill.) for excessive auto premiums. The Complaint alleges that premiums charged during the COVID-19 pandemic are "unconscionably excessive" due to the reduction in driving and driving-related accidents as a result of social distancing and stay-at-home orders. GEICO is alleged to have failed to issue adequate refunds, with its "GEICO Giveback" program being described as "woefully inadequate" because the program applies only to new and renewal auto policies, not to premiums paid for policies in existence at the start of the pandemic, and the program's 15% credit allegedly "falls well short of what has been conservatively estimated as an adequate return of premiums." The Complaint seeks disgorgement of the "ill-gotten gains obtained by GEICO to the detriment of its customers," as well as declaratory relief, injunctive relief, and punitive damages. The proposed class includes all Illinois residents

who purchased personal automobile, motorcycle, or RV insurance from GEICO covering any portion of the time period from March 21, 2020 to the present.

Connecticut Joins States With Rebuttable Presumption in Workers' Comp

Connecticut Governor Ned Lamont has issued [Executive Order No. 7JJJ](#), which contains a rebuttable presumption that an employee who initiates a claim for payment of benefits, and who missed a day or more of work between March 10, 2020 and May 20, 2020, inclusive, due to a diagnosis of COVID-19, or due to symptoms that were diagnosed as COVID-19, contracted COVID-19 as an occupational disease arising out of and in the course of employment.

New Business Interruption Suits Against Insurers:

A cosmetic surgical and medical aesthetics center [sued](#) Crum & Forster Specialty Insurance Company, National Fire & Marine Insurance Company, and Certain Underwriters at Lloyd's London in Florida state court (Broward County), asserting claims for declaratory relief and breach of contract. The "all risk" policy allegedly provides business income, extended business income, extra expense, business personal property, and civil authority coverage. Complaint at ¶¶ 33-41. The Complaint alleges that COVID-19 "is a cause of real physical loss and damage to Plaintiff's property" and the insurers' position that there has been no direct physical loss to insured property is incorrect." *Id.* at ¶ 54. The Complaint further alleges that the policy's "Nuclear, Biological, Chemical and Radiological Hazards Exclusion" does not apply because the exclusion does not "exclude coverage due to a pandemic or global pandemic" and "the language of the policy exclusion does not apply to a pandemic and is also vague and ambiguous." *Id.* at ¶ 59.

The operator of three restaurants [sued](#) Aspen Specialty Insurance Company in Florida state court (Miami-Dade County) for declaratory relief. The "all risk" policy at issue allegedly provides business income and extra expense coverage. Complaint at ¶ 5. The Complaint alleges that the policy "includes improper coverage exclusion(s) or limitation(s) used by [the insurer] to reduce benefits," *id.* at ¶ 14, and that it "should be fairly interpreted in favor of coverage" and "against exclusion(s) or limitation(s)." *Id.* at ¶ 17.

In three separate complaints, [here](#), [here](#), and [here](#), the operator of a furniture company sued Blackboard Insurance Company in Florida state court (Miami-Dade County) for breach of contract. The "all risk" policy allegedly provides business income, extended business income, extra expense, and civil authority coverage. Complaint at ¶¶ 24, 27, 28, 29. The Complaint alleges that the COVID-19 pandemic is a "natural disaster" and that like "other specific disasters, such as hurricanes or earthquakes, it involves substantial damage to property, hardship, suffering, and loss of life." *Id.* at ¶ 39.

The operator of a Miami entertainment complex [sued](#) Axa XL Insurance Group, Indian Harbor Insurance Company, Hallmark Specialty Insurance Company, and Ategrity Specialty Insurance Company in federal court (S.D. Fla.), asserting claims for declaratory relief and breach of contract. The "all risk" policies allegedly provide business interruption, civil authority, and ingress/egress coverage. Complaint at ¶¶ 26, 27, 28. The Complaint alleges that the "presence of COVID-19 caused direct physical loss of and/or damage to the Insured Property under the Policy by, among other things, damaging the property, denying access to the property, preventing customers and patients from physically occupying the property, causing the property to be physically uninhabitable by customers and patients, causing its function to be nearly eliminated or destroyed, and/or causing a suspension of business operations on the premises." *Id.* at ¶ 55. The plaintiff notes in the Complaint that it has made claims with

several other insurers and intends to amend its complaint to add those insurers as additional defendants should they refuse to provide coverage. *Id.* at 1 n.1.

A restaurant sued Grange Mutual Casualty Company in Ohio state court (Hamilton County), asserting claims for declaratory relief, breach of contract, and bad faith. The “all risk” policy allegedly provides business income, extra expense, civil authority, and ordinance or law coverage. Complaint at ¶ 8. The insurer allegedly denied coverage the same day the claim was submitted, contending, among other things, that the restaurant did not suffer direct physical damage to its property. *Id.* at ¶ 3. The Complaint alleges that the COVID-19 pandemic “rendered the Covered Property unsafe, uninhabitable, or otherwise unfit for its intended use, which constitutes direct physical loss,” *id.* at ¶ 44, and that the policy’s virus exclusion does not preclude coverage to “the extent that the Closure Orders, in and of themselves, constitute direct physical loss of or damage to Plaintiff’s Covered Property, and/or preclusion of access to the Covered Property because of Civil Authority order related to damage to nearby properties.” *Id.* at ¶ 49.

The owner and operator of a performance theatre sued Cincinnati Insurance Company, Cincinnati Casualty Company, and Cincinnati Indemnity Company in Ohio state court (Hamilton County) for declaratory relief. The “all risk” policy allegedly provides business income and civil authority coverage. Complaint at ¶ 1. The Complaint seeks a declaration that the airborne presence of coronavirus and/or the presence of the virus on numerous surfaces and numerous properties throughout the state of Ohio be considered property damage and that the preponderance of the evidence supports the conclusion that it is more likely than not that the virus was present on other property in and around and within one mile of the insured’s premises. *Id.* at ¶ 18.

The owner of a restaurant in Philadelphia sued Seneca Insurance Company, Inc. in Pennsylvania state court (Philadelphia County), asserting claims for breach of contract, breach of the duty of good faith and fair dealing, and statutory bad faith. The policy allegedly provides business income, extra expense, and civil authority coverage. Complaint at ¶¶5-11. The policy contains an exclusion for “for loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease.” *Id.* at ¶9. The Complaint alleges that the defendant denied the plaintiff’s claim for coverage “without conducting any investigation whatsoever and in spite of the clear policy language granting coverage for these losses to” the plaintiff. *Id.* at ¶20.

The owner of a fashion boutique chain with locations in several states sued Hartford Fire Insurance Company in federal court (E.D. Pa.), asserting claims for declaratory relief, breach of contract, and statutory remedies for wrongful denial under 42 Pa. Stat. Ann. §8371. The “all risk” policy at issue allegedly provides business income, extra expense, civil authority, dependent properties, extended income, future earnings, and ingress or egress coverage. Complaint at ¶¶18-19. The policy also contains a general “Fungus, Wet Rot, Dry Rot, Bacteria or Virus exclusion.” *Id.* at ¶48. The Complaint alleges that the defendant wrongfully denied the plaintiff’s coverage without sufficient investigation. *Id.* at ¶¶43-52.

The owner of a hair salon in Dallas sued Nova Casualty Company in Texas state court (Dallas County), asserting claims for breach of contract, noncompliance with Texas Insurance Code, and breach of the duty of good faith and fair dealing. The “all-risk” policy allegedly provides business income, extra expense, and civil authority coverage. Complaint at ¶7. The policy contains an exclusion for “virus or bacteria.” *Id.* at ¶17. The Complaint alleges that the defendant wrongfully denied its claim for coverage, failed to conduct a good faith investigation or adjustment of the claim, and mishandled the claim by asking “cross-examination

style questions not intended to gather facts, but instead clearly formulated to create a basis for [the insurer] to claim an exclusion applies. . .” *Id.* at ¶18.

Cozzini Bros. sued Cincinnati Insurance Company in federal court (N.D. Ill.) seeking coverage for COVID-19 related business losses. Plaintiff alleges it sustained losses “due to the issues created by the physical spread and/or contamination of COVID-19 at, in, on, and/or around its premises and its customers’ premises.” Complaint at ¶38. The Complaint asserts the “all-risk” policy contains no applicable exclusion and provides coverage for “business interruption losses, including lost earning and extra expenses incurred while access to Covered Location is denied by order of Civil Authority.” *Id.* at ¶20.

Haisous LLC sued State Auto Property Casualty Insurance Company in federal court (N.D. Ill.) seeking coverage under the “all-risk” policy for COVID-19 related business losses. Plaintiff alleges it was “required to suspend its operations at each of the three insured Haisous locations” in response to the government orders designed to “contain the spread of COVID-19.” Complaint at ¶¶9-10. Plaintiff seeks coverage for the submitted losses under the policy’s Business Income, Extended Business Income, Extra Expense, and Civil Authority coverage provisions. The Complaint alleges that the insurer “improperly declined coverage for the Claim without any justification and any proper investigation.” *Id.* at ¶63. Plaintiff seeks declaratory relief and damages for breach of contract and bad faith.

Tannins Wine Bar sued Erie Insurance Exchange in federal court (N.D. Ill.) alleging that due to orders issued by the Governor of Illinois in response to COVID-19, it “lost the use of the Insured Property for dine-in-services” and “has necessarily had to suspend business activities occurring at the Insured Property.” Complaint at ¶22. The Complaint alleges that the commercial policy at issue provides coverage under the Business Income, Contingent Business Interruption, Extra Expense, and Civil Authority provisions, and that the policy’s virus exclusion does not apply as Plaintiff’s losses were “caused by the COVID-19 Executive Orders issued in response to the COVID-19 pandemic.” *Id.* at ¶38

Plaintiffs Koeppel Clark LLC and Beko Properties LLC sued Starr Indemnity & Liability Co. in federal court (E.D. La.) seeking coverage for COVID-19 related business losses. Plaintiffs allege the actions taken by state and local governments in response to COVID-19 trigger the Business-owners Policy’s Business Income, Extra Expense, and Civil Authority provisions.

Belissimo Salon sued Travelers Casualty Insurance Company of America in federal court (D. Minn.) seeking coverage for COVID-19 related business losses. Plaintiff alleges it was required to cease operations, and ultimately dissolve, in response to government orders issued in response to COVID-19. The Complaint asserts the business income losses are covered by the Excess Follow Form and Umbrella Liability Insurance Policy, and the insurer wrongfully denied its claim.

A California restaurant sued Farmers Group and one of its member companies in California state court (Riverside Cty.) seeking a declaration that it is entitled to coverage for business interruption losses due to California’s COVID-19 closure orders. The complaint alleges that the policy at issue provides property, business personal property, business income, civil authority, and extra expense coverages, and brings a single cause of action for declaratory relief.

A restaurant sued Century-National Insurance Company in California state court (Los Angeles Cty.) alleging the insurer wrongfully denied its claim for business interruption losses due to California’s COVID-19 closure orders. The complaint alleges that the policy provides business interruption, extra expense, and civil authority coverages and does not contain a virus exclusion. The restaurant alleges that the “presence of any of the Virus particles causes direct physical harm to property” thereby rendering “items of physical property unsafe, and impairs its value, usefulness, and normal function,” and cites to the

closure order issued by the City of Los Angeles, which states in part, “the COVID-19 Virus . . . is physically causing physical loss or damage due to its tendency to attach to surfaces for prolonged periods of time.”

A fertility center sued Transportation Insurance Company and Golden Empire Insurance Company in California state court (Orange Cty.) alleging Transportation wrongfully denied its claim for business interruption losses due to California’s COVID-19 closure orders. The complaint alleges that the policy provides business income, extended business income, business income from dependent properties, and civil authority coverages, that it “has had its insurance claim denied without any reasonable investigation, attempt to search for coverage, or other good faith conduct from its insurer,” and that Transportation’s denial based on lack of physical loss of or damage to property “directly contradicts decades of case law nationwide acknowledging that when an external force – such as toxic vapors, gases, or odors – causes a covered premises to become temporarily or permanently unusable or uninhabitable, that loss and loss of use is considered ‘direct physical loss of’ the covered premises and has been deemed a covered loss under business interruption policies.”

The owners of California hotels sued Fireman’s Fund Insurance Company in California state court (Los Angeles Cty.) alleging the insurer wrongfully denied its claims for business interruption losses due to California’s COVID-19 closure orders. The complaint alleges the “all-risk” policy provides business income, extra expense, civil authority, and communicable disease coverages, that financial elder abuse occurred because one of the hotel owners is defined as a “senior citizen,” and Fireman’s Fund “perpetrated ‘financial abuse’” by “taking, appropriating, obtaining and/or retaining personal property in the form of benefits owing to [plaintiff] under the Policy for a wrongful use and/or with the intent to defraud.” The complaint further alleges that “employees of the Insureds have tested positive for COVID-19 resulting in the existence of COVID-19 at, and direct physical loss and damage to, the Insured Properties.”

A restaurant sued its insurance broker, United Valley Insurance Services, and its insurer, General Casualty Company of Wisconsin, in California state court (Orange Cty.) alleging the broker negligently procured the policy at issue and the insurer wrongfully denied its claim for business interruption losses due to California’s COVID-19 closure orders. The complaint alleges the “all-risk” policy provides business income, civil authority, and governmental action coverages, that the insurer did not investigate the claim beyond a single telephone conversation with the insured, despite California Insurance Commissioner Lara’s notice to insurers that they must “conduct and diligently pursue a thorough, fair, and objective investigation of the reported claim,” and contends that the insurer was “required to state in its . . . denial letter all the factual, contractual, and legal grounds for denying the claim, thus forfeiting the right to raise additional grounds to attempt to justify its denial.”

A group of San Francisco restaurants sued Mid-Century Insurance Company and Oregon Mutual Insurance Company in California state court (San Francisco Cty.) alleging the insurers wrongfully denied their claims for business interruption losses due to California’s COVID-19 closure orders. The complaint alleges the policies at issue provided business income, extra expense, control of property, and civil authority coverages, and that neither insurer “conducted, or diligently pursued, a thorough, fair or objective investigation of the Plaintiffs’ claims. According to the Complaint, Mid-Century issued its denial of coverage four or five days after it received notice of its insureds’ claims,” and that “Oregon Mutual issued its denial of coverage two business days after receiving its insured’s claim. In no instance did the insurers contact the Plaintiffs to obtain information about their noticed claims.”

A California restaurant sued Liberty Mutual Insurance in federal court (C.D. Cal.) alleging the insurer wrongfully denied its claim for business interruption losses due to California’s COVID-19 closure orders. The complaint alleges the policy at issue provides

business income, civil authority, and extra expense coverages, that its compliance with the closure orders “caused direct physical loss to Plaintiff’s property in that the property was made useless and/or uninhabitable,” and that the denial, which was allegedly “made with little or no investigation,” “rests on an erroneous and misplaced reading of coverage language, and an overbroad reading of the policy’s exclusions,” and therefore “raises the specter of a bad faith denial.”

A California restaurant sued Nationwide Insurance Company in federal court (C.D. Cal.) alleging the insurer wrongfully denied its claim for business interruption losses due to California’s COVID-19 closure orders. The complaint alleges the “comprehensive commercial liability and property insurance policy” at issue provides business income, civil authority, and extra expense coverages, that because it is a dine-in restaurant, it had to cease operations completely as a result of the closure orders, and that as such, “compliance with these orders caused direct physical loss to Plaintiff’s property in that the property were (*sic*) made useless and/or uninhabitable.”

A California frozen yogurt shop sued The Hanover Insurance Company in federal court (C.D. Cal.) alleging the insurer wrongfully denied its claim for business interruption losses due to California’s COVID-19 closure orders. The complaint alleges that the policy at issue provides business income and civil authority coverages, and that while the policy has a virus exclusion, it does not apply because the “business losses incurred by Plaintiff . . . are proximately caused by the COVID-19 Executive Orders in response to the COVID-19 pandemic.”

The owner of a California retail clothing store sued The Hanover American Insurance Company in federal court (C.D. Cal.) alleging the insurer wrongfully denied its claim for business interruption losses due to California’s COVID-19 closure orders. The complaint alleges the “comprehensive commercial liability and property insurance policy” includes business income, civil authority, and extra expense coverages, and that the denial letter “rests on an erroneous and misplaced reading of the coverage language, and an overbroad reading of the policy’s exclusions,” therefore “rais[ing] the specter of a bad faith denial.”

Business Interruption Class Action Filings:

Legacy Sport Barbershop filed a class action complaint against Continental Casualty Company in federal court (N.D. Ill.) seeking declaratory relief and damages on behalf of itself and members of the putative class. The Complaint asserts COVID-19 and government orders issued in response to the pandemic have made the insured property unusable, and forced Plaintiff to close for an extended period of time. Plaintiff alleges the Business Income, Extra Expense, Sue and Labor, and Civil Authority provisions of the policies at issue provide coverage for COVID-19 related business losses.

Several Planet Sub restaurants in Missouri, Oklahoma, and Kansas filed a class action complaint against State Auto Property and Casualty Company, Inc. in federal court (W.D. Mo.). The Complaint seeks coverage for COVID-19 related business interruption losses, and alleges that Plaintiffs were required to suspend operations at several locations due to the likely presence of COVID-19, as well as in response to state orders designed to slow the spread of the virus. The Complaint alleges that the policies issued to Plaintiffs and Class Members provide coverage for the incurred losses under the Business Income, Extra Expense, Sue and Labor, and Civil Authority coverage provisions, and that no exclusion applies.

Quality Inn & Suites Bradley filed a class action complaint against Aspen Specialty Insurance Company in federal court (N.D. Ill.) asserting claims for breach of contract and seeking declaratory relief on behalf of itself and those similarly situated. Plaintiff alleges coverage under the “all-risk” Aspen policies is available for COVID-19 related business interruption losses, and alleges that actions taken by state and local governments in response to the pandemic trigger the policies’ Business Income, Extra

Expense, and Civil Authority provisions. The Complaint seeks relief on behalf of a Nationwide Class of Aspen policyholders impacted by the COVID-19 related actions of civil authorities and an Illinois sub-class.

A Chicago tavern filed a [class action complaint](#) against Cincinnati Insurance Company in federal court (N.D. Ill.) seeking coverage for pandemic related business interruption losses. Plaintiff alleges “multiple structures in the vicinity of Plaintiff’s covered premises reported COVID-19 infections,” and in response to the orders of state and local governments it was “forced to close its premises to the public.” Complaint at ¶¶56-59. The Complaint asserts the “all-risk” Cincinnati policy provides coverage for the submitted losses under the Business Income, Extended Business Income, Extra Expense, and Civil Authority provision. Plaintiff seeks, on behalf of itself and members of the class, declaratory relief and damages in connection with claims of breach of contract and bad faith.

Cobb’s Second Time Around Thrift Shop filed a [class action complaint](#) against Erie Insurance Property and Casualty Company in federal court (D. N.J.) seeking coverage for business losses allegedly sustained due to government orders issued because of the pandemic. The Complaint asserts Plaintiff and Class Members suffered covered losses when they were required to close operations in response to government orders designed to stop the spread of the coronavirus. Plaintiff alleges the policies at issue provide coverage for the submitted claims under the Income Protection, Extra Expense, Civil Authority, and Contingent Business Interruption coverage provisions.

The operator of a performing arts theatre [sued](#) SCOR SE and General Security Indemnity Company of Arizona in federal court (S.D. Fla.), on behalf of itself and all others similarly situated, 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 ¶¶ 6, 7. The Complaint alleges that class claims “derive directly from a single course of conduct by [the insurers]: their systematic and uniform refusal to pay insureds for losses suffered due to the COVID-19 pandemic and the related actions taken by civil authorities to suspend business operations.” *Id.* at ¶ 56. The proposed classes include: (1) all “persons and entities with Business Income coverage under a property insurance policy issued by any of the Defendants, which suffered a suspension of business due to COVID-19, and for which Defendants have denied a claim for the losses or have otherwise failed to acknowledge, accept as a covered loss, or pay for the covered losses;” (2) all “persons and entities with Civil Authority coverage under a property insurance policy issued by any of the Defendants, which suffered loss of Business Income and/or Extra Expense caused by an action of a civil authority, and for which Defendants have denied a claim for the losses or have otherwise failed to acknowledge, accept as a covered loss, or pay for the covered losses;” and (3) all “persons and entities with Extra Expense coverage under a property insurance policy issued by any of the Defendants, which sought to avoid or minimize the suspension of business caused by COVID-19 and/or the actions of civil authorities in response to COVID-19, and for which Defendants have denied a claim for the expenses or have otherwise failed to acknowledge, accept as a covered expense, or pay for the covered expenses.” *Id.* at ¶ 58.

The operator of two restaurants filed a [class action complaint](#) against Auto Owners Insurance Company in Ohio state court (Portage County), asserting claims for declaratory relief, breach of contract, and breach of the covenant of good faith and fair dealing. The “all risk” policy at issue allegedly provides business personal property, business income, extra expense, and civil authority coverage. Complaint at ¶¶ 9, 11. The Complaint alleges that the actual or suspected physical presence of COVID-19 at or in the vicinity of the insured property “constitutes a physical loss to the Property in that there has been a loss of use of the Property.” *Id.* at ¶ 12. The named plaintiff’s claim has not been denied, but the insurer allegedly “intends to deny Plaintiff’s Claims,” *id.* at ¶ 31, and “plans to use inapplicable exclusions to deny claims for Business Interruption, Extra Expense and Civil

Authority claims related to the COVID-19 pandemic.” *Id.* at ¶ 37. The proposed class is defined as “[a]ll individuals and entities throughout the United States who, from January 1, 2020 to the present have been insured by Commercial and/or Business Owner Policies issued by Defendant and denied Business Income loss, Extra Expense and/or Civil Authority coverage due to COVID-19.” *Id.* at ¶ 42.

A restaurant filed a class action complaint against Zurich American Insurance Company in Ohio state court (Cuyahoga County), asserting claims for declaratory relief, breach of contract, and breach of the covenant of good faith and fair dealing. The “all risk” policy at issue allegedly provides business income, extra expense, and civil authority coverage. Complaint at ¶¶ 10, 11. The Complaint alleges that the “executive orders issued by the Governor of Ohio, and the majority of other State Governors, in response to the pandemic have caused direct physical loss of Plaintiff and Class Members’ properties.” *Id.* at ¶ 26. The insurer is alleged to have “wrongfully and intentionally used the terms ‘virus’ and ‘bacteria,’ among others, to exclude Plaintiff and Class Members’ claims when, in fact, Plaintiff and Class Members’ claims are, as admitted by Defendant, related to a pandemic – which is not expressly excluded in the subject policy(s).” *Id.* at ¶ 39. The proposed class is defined as “[a]ll individuals and entities throughout the United States who, from January 1, 2020 to the present have been insured by Commercial and/or Business Owner Policies issued by Defendant and denied Business Income loss, Extra Expense and/or Civil Authority coverage due to COVID-19.” *Id.* at ¶ 42.

The operator of a restaurant filed a class action complaint against The Hartford Financial Services Group, Inc. and Twin City Fire Insurance Co. in federal court (D. Mass.), asserting claims for declaratory relief, breach of contract, and violation of G.L. c. 93, §§ 2, 11. The “all risk” policy at issue allegedly provides business interruption, extra expense, and civil authority coverage. Complaint at ¶¶ 3, 6. The insurer allegedly denied coverage as part of an intentional strategy to “deny all claims related to the civil authority orders entered by state and local governments and COVID-19.” *Id.* at ¶ 8. The Complaint alleges that the insurer “could have used standard insurance industry forms or coverage provisions to specifically exclude losses relating to viruses like COVID-19 from coverage, but it did not do so.” *Id.* at ¶ 66. The proposed nationwide classes are defined as: (1) “[a]ll persons or entities in the United States (including its territories and the District of Columbia) who own an interest in a business that served food and beverages on the premises which had Business Income and/or Extra Expense coverage under a property insurance policy issued by Defendants, which does not have an express virus or pandemic exclusion, that suffered a suspension of business operations due to their inability to use their property for their intended purpose[] due to COVID-19;” and (2) “[all] persons or entities in the United States (including its territories and the District of Columbia) who own an interest in a business that served food and beverages on the premises which had Civil Authority coverage under a property insurance policy issued by Defendants, which does not contain an express virus or pandemic exclusion, that suffered loss of Business Income and/or Extra Expense caused by an action of a civil authority.” *Id.* at ¶¶ 93, 94.

A California office machine sales and repair business filed a class action lawsuit against The Travelers Companies and its subsidiary in federal court (N.D. Cal.) alleging the insurer wrongfully denied its claim for business interruption losses due to California’s COVID-19 closure orders. The complaint alleges that the policy at issue provides business income, extra expense, and civil authority coverages, and brings causes of action for breach of contract, bad faith, unfair competition, and declaratory relief. The repair business alleges that Travelers denied the claim “without having conducted any investigation,” and that the denial letter “appeared to be a form letter covering claims throughout the United States and . . . identified 10 states other than, and in addition to, California, in which special state law provisions applied.” The complaint further alleges that the policy’s virus exclusion is “inapplicable because the loss of income was not caused by the presence of COVID-19 or any other virus at Plaintiff’s described premises . . . but instead the loss is based on preventative closures ordered by civil authorities.”

Oaklandish, LLC, a California fashion retailer, [filed](#) a class action lawsuit against Sentinel Insurance Company in federal court (N.D. Cal.) alleging the insurer wrongfully denied its claim for business interruption losses due to California’s COVID-19 closure orders. Oaklandish alleges that the Sentinel policy provides business income, civil authority, and extra expense coverages, and brings causes of action for declaratory judgment, breach of contract, and bad faith. The retailer alleges that “insurance companies operating in California are categorically denying claims from retailers” and that such denials “rest on crabbed readings of coverage language and overbroad readings of exclusions. That gets insurance law exactly backwards – and raises the specter of bad-faith denials.”

The owner of Great Clips hair salon franchises [filed](#) a class action lawsuit against CNA Financial Corporation and its subsidiary in federal court (D. Colo.) alleging the insurer wrongfully denied its claim for business interruption losses due to Colorado and Missouri’s COVID-19 closure orders. The complaint focuses on an alleged misstatement on CNA’s website that business interruption coverage applies when there is “loss or damage to insured property.” Plaintiffs contend that this “statement is wrong, and CNA must know that it is wrong. Its policies . . . provide coverage for a ‘physical loss of or damage to’ property. In purporting to describe its policies, CNA omitted the word ‘of’ to make it appear that a ‘loss of property’ is not covered. But a ‘loss of property’ is covered.” The salon further alleges that the “COVID-19 pandemic caused a direct physical loss of property at Plaintiff’s premises . . . by denying Plaintiff the ability to physically access and use the property in the normal fashion in its business and/or denying its members and others the ability to physically access and use the property. It is therefore a covered loss.”

A California barbershop [filed](#) a class action lawsuit against The Hartford Financial Services Group and its subsidiary in federal court (S.D. Cal.) alleging the insurer wrongfully denied its claim for business interruption losses due to California’s COVID-19 closure orders. The barbershop alleges that the Hartford “denied Plaintiffs’ claims without any inspection or review of either of Plaintiffs’ physical locations or documents concerning their business activities in 2020,” and has therefore “waived any right to inspect these premises, deny coverage for any reason related to conditions at these locations, or raise any defense related to conditions at these locations or facts specific to Plaintiffs.” The complaint further alleges that Hartford has engaged in a “systemic and blanket refusal to provide any coverage for business losses related to the COVID-19 pandemic and the related actions taken by civil authorities to suspend business operations.”

A group of restaurants filed a [class action lawsuit](#) against Hartford Fire Insurance Company in federal court (D. Conn.) alleging the insurer wrongfully denied its claim for business interruption losses due to New York’s COVID-19 closure orders. The restaurants allege the “all-risk” policy at issue provides business interruption, civil authority, and extra expense coverages, and brings causes of action for declaratory judgment and breach of contract. The complaint alleges that the policy’s virus and bacteria exclusion does not preclude coverage because plaintiffs’ “losses were not caused by a ‘virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease,” and rather the “efficient proximate cause of Plaintiffs’ . . . losses were the Closure Orders, not because coronavirus was found in or on Plaintiffs’ insured property.”

Zurich Files Declaratory Business Interruption Suit Against Restaurant Group

Zurich American Insurance Company [sued](#) the owner and operator of a restaurant group in federal court (M.D. Fla.) for declaratory relief with respect to claims for coverage for alleged losses due to COVID-19. The suit seeks guidance on the application of policy language affording coverage for “direct physical loss of or damage caused by a Covered Cause of Loss to Covered Property,” extra expense, civil or military authority, and ingress/egress coverage. Complaint at ¶¶ 7, 13. The insurer

alleges that coverage is or may not be afforded because, among other reasons, there “has been no direct physical loss of damage caused by a Covered Cause of Loss to Covered Property at an Insured Location” and due to the policy’s contamination exclusion *Id.* at ¶ 13.

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

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