

## Client Alert

### Insurers' COVID-19 Notepad: What You Need to Know Now (Week of June 22)

June 22, 2020

#### Illinois Requires Business Interruption Task Force

The Illinois legislature enacted an amendment to [Senate Bill 2135](#) requiring the Illinois Department of Insurance to appoint a task force on business interruption insurance policies. The Department must appoint no more than 10 members representing both the Department and the insurance industry, and the task force will be charged with studying the impacts of the coronavirus pandemic on businesses and the need for changes to business interruption insurance based on such impacts, including recommendations for legislation.

#### COVID-19 and Credit Scoring

**Washington:** On June 17, Washington State Insurance Commissioner Mike Kreidler [issued a press release](#), urging due to economic impact of COVID-19 and the need to end institutional racial discrimination, that the insurance industry should end use of credit scoring in auto, property, renters and life insurance. The Commissioner is urging the Legislature to amend two state laws that allow insurance companies to help determine rates for consumers in Washington.

#### COVID-19 and Workers Comp

**California:** On June 17, California Insurance Commissioner Ricardo Lara [issued an order](#) mandating that workers' compensation carriers reflect reduced risk of loss in premiums due to "stay-at-home" orders. These new regulations will mandate insurance companies to recompute premium charges for policyholders to reflect reduced risk of loss, and will result in savings for many policyholders during the COVID-19 pandemic.

**Michigan:** On June 17, Michigan Department of Insurance and Financial Services Director Anita Fox issued [Order No. 2020-11-M](#), noting that the COVID-19 pandemic has resulted in significant impacts to Michigan employers, and has resulted in significant reductions in worker's compensation claims activity. The order requires all insurers authorized to write worker's compensation insurance in Michigan who have not already submitted a filing, or who have not yet implemented an adjustment, credit, or endorsement, to submit one of the following filings no later than June 26, 2020: 1) a plan to offer an adjustment, credit, or endorsement to their employer customers; or 2) an explanation of why an adjustment, credit, or endorsement is not warranted at this time. Both types of filings must be accompanied by detailed actuarial support.

### **New Business Interruption Suits Against Insurers:**

The owner of an art gallery in Pennsylvania sued The Hartford Financial Services Group Inc. and Twin City Fire Insurance Company in federal court (E.D. Pa.), seeking a declaration that its insurance policy provides coverage for any current and future closures of businesses due to physical loss or damage from the coronavirus and/or pandemic, and provides coverage in the event that the virus has caused loss or damage at its property. The “all risk” policy at issue allegedly provides business income, extra expense, contamination, and civil authority coverage. Complaint at ¶¶15-22. The policy contains a virus exclusion that applies to “loss or damage caused or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.” *Id.* at ¶29. The Complaint alleges that the plaintiff contacted its insurance agent about making a claim under the policy and was told the defendants would reject the claim. *Id.* at ¶38.

The owner of a clothing boutique in Pennsylvania sued Sentinel Insurance Company in federal court (E.D. Pa.), seeking a declaration that its insurance policy provided coverage for any current, future or continued closures of its business due to physical loss or damage directly or indirectly from the coronavirus or closures due to civil authority. The “all risk” policy at issue allegedly provides business income, extra expense, and civil authority coverage, and contains a virus 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.” Complaint at ¶¶17-28. The Complaint alleges that the virus is physically impacting the plaintiff’s property, and that any effort by the insurer to deny that the virus causes physical loss and damage would constitute a false and potentially fraudulent misrepresentation. *Id.* at ¶64.

The owner of restaurants in South Carolina, Georgia, North Carolina, and Kentucky sued Selective Insurance Company of the Southeast and Selective Insurance Company of America in federal court (D.S.C.), seeking a declaration of coverage for losses incurred and to be incurred as a result of COVID-19 and state closure orders. The policy at issue allegedly provides coverage for business loss, food contamination, spoilage, and costs associated with crisis responses caused by “direct physical loss or damage to property at covered locations...” Complaint at ¶8. The Complaint alleges that the insurer has denied coverage for the plaintiff’s losses. *Id.* at ¶¶15-16.

The owner of a restaurant in Nashville sued The Cincinnati Insurance Company, The Cincinnati Casualty Company, and The Cincinnati Indemnity Company in federal court (M.D. Tenn.), asserting claims for declaratory relief, breach of contract, and punitive damages. The “all risk” policy at issue allegedly provides business income, extra expense, and civil authority coverage, and does not contain a virus exclusion. Complaint at ¶¶26-34. The Complaint alleges that the continuous presence of the virus on or around the plaintiff’s premises has caused physical damage or loss under the policies, and that as a result of subsequent state closure orders, it has suffered covered business income loss. *Id.* at ¶¶37-40. The Complaint further alleges that the defendant wrongfully denied the plaintiff’s claim for coverage, and that its denial was intentional, fraudulent, malicious and/or reckless, justifying an award of punitive damages. *Id.* at ¶¶41-42, 54.

The owner of another restaurant in Nashville sued The Cincinnati Insurance Company, The Cincinnati Casualty Company, and The Cincinnati Indemnity Company in federal court (M.D. Tenn.), asserting claims for declaratory

relief, breach of contract, and punitive damages. The “all risk” policy at issue allegedly provides business income, extra expense, and civil authority coverage, and does not contain a virus exclusion. Complaint at ¶¶26-34. The Complaint alleges that the continuous presence of the virus on or around the plaintiff’s premises has caused physical damage or loss under the policies, and that as a result of subsequent state closure orders, it has suffered covered business income loss. *Id.* at ¶¶37-40. The Complaint further alleges that the defendant wrongfully denied the plaintiff’s claim for coverage, and that its denial was intentional, fraudulent, malicious and/or reckless, justifying an award of punitive damages. *Id.* at ¶¶41-42, 54.

A restaurant in San Antonio sued AMCO Insurance Company, Nationwide Mutual Insurance Company, and its brokers in Texas state court (Bexar County) for breach of contract, noncompliance with the Texas Insurance Code, breach of the duty of good faith and fair dealing, and civil conspiracy. The “all risk” policy at issue allegedly provides business income, extra expense, and civil authority coverage. Complaint at ¶¶8, 15, 17. The policy contained a virus endorsement excluding losses caused “from any virus, bacterium...that induces or is capable of inducing physical illness or disease.” *Id.* at ¶21. The Complaint alleges that, as a result of state and local closure orders, the plaintiff sustained and will continue to sustain covered losses. *Id.* at ¶¶12-14. The Complaint further alleges that its insurers wrongfully denied the plaintiff’s claim for coverage without meaningful investigation. *Id.* at ¶¶18-21.

The owner of cafes and retail stores in Seattle, Portland, New York, and Los Angeles sued Fireman’s Fund Insurance Company in Washington state court (King County) for violations of the state’s Insurance Fair Conduct Act and Consumer Protection Act, and breach of contract. The “all risk” policy at issue allegedly provides business income, extra expense, civil authority, dependent property, communicable disease, and business access coverage. Complaint at ¶¶3.3, 3.8-3.15. The Complaint alleges that the insurer denied the plaintiff’s claim for coverage, and that the plaintiff subsequently filed an IFCA claim. *Id.* at ¶¶3.67-3.72.

The owner of a salon in Washington state sued Sentinel Insurance Company in Washington state court (Pierce County) for breach of contract and noncompliance with the state’s Insurance Fair Conduct Act and Consumer Protection Act. The policy at issue allegedly provides business income and civil authority coverage. The Complaint alleges that the plaintiff has sustained and will sustain covered losses during the COVID-19 outbreak and subsequent state closure orders, and that the insurer wrongfully denied and mishandled its claim for coverage without conducting an adequate investigation.

An Alabama retailer sued The Cincinnati Insurance Company in federal court (N.D. Ala.) alleging the insurer wrongfully denied its claim for business interruption losses due to Alabama’s COVID-19 closure orders. The complaint alleges that Cincinnati cited to the policy’s pollution exclusion as a basis for the denial, and determined that the Coronavirus “is a solid irritant or thermal contaminant.” The retailer further asserts that the 2006 ISO virus exclusion “conceded . . . that bacterial or viral contamination is property damage, because as contaminants they render a physical object unusable until remediation or replacement.”

Restaurant owners sued Farmers Insurance Exchange in California state court (Los Angeles Cty.) alleging the insurer wrongfully denied their claims for business interruption losses due to California’s COVID-19 closure orders. The complaint alleges that the claims were denied “over the telephone at the time the claims were

reported” with “little or no investigation, ” and that while the policies at issue contain virus exclusions, “Farmers’ reasons for denying coverage . . . are contrary to the terms and conditions of the policies and applicable law.”

A group of restaurants sued Farmers Insurance and one of its subsidiaries in California state court (San Francisco Cty.) alleging the insurer wrongfully denied their claims for business interruption losses due to California’s COVID-19 closure orders. The complaint alleges that “the streets on which the Restaurants are located, and the buildings and objects in and around it, became a breeding ground for the disease,” and that “Coronavirus was and is present in these areas because, for example, it has attached to properties and surfaces on, at, or within properties near the Restaurants.” The restaurants further allege that the policies’ virus exclusion does not apply because it is limited to harm “caused by or resulting” from a virus, not “independent actions taken in connection with the virus, by governmental authorities.”

Two San Francisco restaurants sued First Mercury Insurance Company in federal court (N.D. Cal.) alleging the insurer wrongfully denied their claims for business interruption losses due to California’s COVID-19 closure orders. The complaint alleges that the orders have “caused and continue[] to cause direct physical loss of [Plaintiff’s] insured property in that much of it has been rendered useless or uninhabitable, and its functionality has been severely reduced or eliminated.” The complaint seeks a declaration that the policies issued by First Mercury provide coverage for Plaintiff’s business income losses, and that coverage is not precluded by the virus exclusions contained therein.

A dental practice sued Cincinnati Insurance Company for declaratory relief, damages, and bad faith in Iowa state court alleging that it suffered losses due to COVID-19 government closure orders. The complaint asserts the “all-risk” policy provides coverage for loss of business income and extra expense resulting from action of civil authority. Complaint at ¶15. Plaintiff alleges it was required to suspend operations as a result of the actions taken by the State of Iowa and, as a result, has sustained loss under the policy at issue. *Id.* at ¶22.

An Iowa restaurant sued Farm Bureau Financial Services in Iowa state court (Polk County) seeking coverage for business interruption losses related to COVID-19. The complaint asserts the government orders issued in response to the pandemic has caused “the necessary suspension of Plaintiff’s operation,” and caused “significant losses to its business income.” Complaint at ¶ 18. Plaintiff alleges the insurer’s denial of the submitted claim per the virus exclusion was wrongful as “Plaintiff has no knowledge of the insured facility being infected with the coronavirus or any other virus...at any time prior to the Governor’s Proclamation and Order.” *Id.* at ¶25. Plaintiff seeks declaratory relief, as well as damages in connection with claims for breach of contract and bad faith

Crestwood Child Care & Learning Center sued West Bend Mutual Insurance Company in Kentucky state court (Oldham County) seeking coverage for business losses as a result of confirmed cases of COVID-19 within Oldham County and government closure orders. Complaint at ¶12. Plaintiff alleges the policy provides “business income and extra expense coverage...due to the outbreak of a communicable disease.” *Id.* at ¶14. The Complaint asserts the insurer did not conduct “a reasonable investigation of the Crestwood Child Care Business Interruption Claim

or the circumstances thereof in good faith,” prior to denying the claim. *Id.* at ¶25. Plaintiff seeks declaratory relief and compensatory and punitive damages in connection with claims for breach of contract and bad faith.

The owner/operator of a commercial real estate development company sued Star Surplus Lines Insurance in Nevada state court (Clark County) seeking coverage for losses caused by Nevada COVID-19 government closure orders. Plaintiff alleges that it sustained business income loss and property damage due to state and local government orders closing and prohibiting access to insured properties. Complaint at ¶36. Plaintiff alleges the “all-risk” policy’s Pollution and Contamination Exclusion does not apply, as the losses incurred “do not stem from a ‘contamination’ event or the actual or threatened release, discharge...of Pollutants at an Insured Location.” *Id.* at 42. The complaint asserts claims for breach of contract and bad faith.

Investigroup sued Hartford and Sentinel Insurance in federal court (D. N.J.) seeking coverage for business interruption losses related to COVID-19. The Complaint asserts Plaintiff’s business was “subject to a variety of Closure Orders by state and local authorities,” preventing it from operating the covered premises for its intended purposes. Complaint at ¶12. Plaintiff alleges that the “all-risk” policy provides coverage for the sustained business interruption loss under the “business income and extra expense, extended business income, virus, and civil authority coverage” provisions. *Id.* at ¶¶3, 7. Plaintiff seeks declaratory relief and damages in connection with claims for breach of contract and bad faith.

Soundview Cinemas sued Great American Insurance Group in New York state court (Nassau County) seeking coverage for COVID-19 related losses under the policy’s Business Income and Extra Expense coverage provisions. The complaint asserts it was required to close for business by executive order of the State of New York. Complaint at ¶20.

Restaurant Cali Fresh sued Hartford in federal court (M.D. N.C.) seeking coverage for business losses resulting from state and local orders issued in response to COVID-19. Plaintiff alleges it has suffered losses as a result of orders issued by civil authorities requiring the suspension of businesses in order to slow the spread of the virus. Complaint at ¶¶24, 29-31. The complaint alleges that the policy’s virus exclusion does not apply, stating it “would be understood by insureds to exclude the presence, growth, proliferation, spread or any activity of virus akin to rot—not to exclude coverage in the context of a global pandemic.” *Id.* at ¶40.

Several bars and restaurants and their parent company sued The Cincinnati Insurance Company in Ohio state court (Franklin County), alleging the insurer wrongfully denied their claims for business interruption losses due COVID-19 closure orders. The “all risk” policy at issue allegedly provides coverage for business income, extra expense, and loss due to the actions of civil authorities. Complaint at ¶ 9. The Complaint alleges that the “[c]ontamination with the pathogen that causes COVID-19 caused direct physical loss and damage to the insured premises, as well as to other premises, such that the loss of business income and extra expense resulting from the curtailment of plaintiffs’ business operations is covered under the policy.” *Id.* at ¶ 27.

The owner and operator of a restaurant and bar sued The Cincinnati Insurance Company in Ohio state court (Cuyahoga County), alleging the insurer wrongfully denied its claim for business interruption losses due to COVID-19 closure orders. The policy at issue allegedly provides coverage for business income, extra expense, extended business income, civil authority, and business income from dependent properties. Complaint at ¶ 1.

The Complaint alleges that the “insurance industry recognizes that viruses can cause physical loss of or physical damage to property” and the insurer chose not to use an “ISO drafted and approved exclusion, or any other expressly stated and applicable alternative policy language, to eliminate coverage for loss or damage caused by viruses or bacteria in Plaintiff’s policy.” *Id.* at ¶ 15.

A traveling baton group and the owner of property rented to the group sued The Cincinnati Insurance Company and LCA Bank Corporation in Ohio state court (Summit County), alleging the insurer wrongfully denied their claim for business interruption losses due COVID-19 closure orders. The “all risk” policy at issue allegedly provides business income, extra expense, and civil authority coverage. *Id.* at ¶¶ 29-34. The Complaint alleges that Plaintiffs’ insured locations “have sustained direct physical property damage or physical loss due to the presence of Coronavirus.” *Id.* at ¶ 46.

The owner and operator of businesses that process, package, and distribute snack foods sued The Cincinnati Insurance Company, alleging the insurer wrongfully denied its claim for business interruption losses due to COVID-19 closure orders. The policy at issue allegedly provides coverage for business income, extra expense, extended business income, civil authority, and business income from dependent properties. Complaint at ¶1. The Complaint alleges that the “insurance industry recognizes that viruses can cause physical loss of or physical damage to property” and the insurer chose not to use an “ISO drafted and approved exclusion, or any other expressly stated and applicable alternative policy language, to eliminate coverage for loss or damage caused by viruses or bacteria in Plaintiff’s policy.” *Id.* at ¶ 15.

The owner and operator of roller rinks sued The Cincinnati Insurance Company in Ohio state court (Montgomery County), alleging the insurer wrongfully denied its claim for business interruption losses due to COVID-19 closure orders. The policy at issue allegedly provides coverage for business income, extra expense, extended business income, civil authority, and business income from dependent properties. Complaint at ¶1. The Complaint alleges that the “insurance industry recognizes that viruses can cause physical loss of or physical damage to property” and the insurer chose not to use an “ISO drafted and approved exclusion, or any other expressly stated and applicable alternative policy language, to eliminate coverage for loss or damage caused by viruses or bacteria in Plaintiff’s policy.” *Id.* at ¶ 15.

The owners and operators of restaurants and bars sued The Cincinnati Insurance Company in Ohio state court (Cuyahoga County) in separate complaints, alleging the insurer wrongfully denied its claim for business interruption losses due to COVID-19 closure orders. The policy at issue allegedly provides coverage for business income, extra expense, extended business income, civil authority, and business income from dependent properties. Complaint at ¶1. The Complaint alleges that the “insurance industry recognizes that viruses can cause physical loss of or physical damage to property” and the insurer chose not to use an “ISO drafted and approved exclusion, or any other expressly stated and applicable alternative policy language, to eliminate coverage for loss or damage caused by viruses or bacteria in Plaintiff’s policy.” *Id.* at ¶ 15.

The operator of a restaurant sued Arch Specialty Insurance Company in Florida state court (Miami-Dade County), alleging the insurer wrongfully denied its claim for business interruption losses due to Florida’s COVID-19 closure orders. The “all risk” policy at issue allegedly provides coverage for “business losses and extra

expenses that result from an involuntary interruption of business operations.” Complaint at ¶ 17. The Complaint alleges that the restaurant’s “lost business income and extra expenses due to a national disaster have not been excluded from coverage.” *Id.* at ¶ 48.

The owner and operator of a restaurant sued Certain Underwriters at Lloyd’s London in federal court (S.D. Fla.), alleging the insurer wrongfully denied its claim for business interruption losses due to Florida’s COVID-19 closure orders. The Complaint alleges “the COVID-19 pandemic caused direct physical loss and resultant/ensuing damages to the Subject Property.” *Id.* at ¶ 12. The insurer allegedly denied coverage on the basis that there was a lack of direct physical loss at the property. *Id.* at ¶ 24.

#### **New Business Interruption Class Action Filings:**

The Ritz Carlton of Dallas sued Zurich American Insurance Company in federal court (N.D. Ill.), individually and on behalf of all others similarly situated alleging claims from declaratory relief and breach of contract. The class complaint seeks declaratory relief and breach of contract damages arising from losses allegedly sustained due to the presence of COVID-19 and orders issued by the State of Texas and several other states in response to the virus. Complaint at ¶¶58-64. Plaintiff alleges Zurich has wrongfully repudiated coverage under the “all-risk” policy, denied coverage for class members’ losses, and the insurer has a policy and practice to deny Property Damage and Time Element claims arising from COVID-19. *Id.* at ¶¶ 76-78.

Sparks Steak House has filed a class action complaint against Admiral Indemnity Company in federal court (S.D.N.Y.) on behalf of itself and others similarly situated for denying claims for losses resulting from COVID-19 and related government orders. The Complaint alleges that the “all-risk” policy at issue provides Business Income, Extra Expense, and Civil Authority coverage. Plaintiff alleges the policy’s virus exclusion does not apply “because the efficient proximate cause of Plaintiff’s and other Class Members’ losses, were the Closure Orders, not because coronavirus was found in or on Plaintiff’s insured property.” Complaint at ¶43. The class consists of New York and nationwide subclasses of plaintiffs who are insured under Admiral policies. *Id.* at ¶50.

The owner of several Missouri restaurants sued Intrepid Insurance Company in federal court (E.D. Missouri) on behalf of itself and all others similarly situated asserting claims for declaratory relief, breach of contract, and bad faith. The policy allegedly provides Business Income, Extra Expense, and Civil Authority coverage. The Complaint alleges that Plaintiff’s property has covered loss as a result of the state closure orders limiting Plaintiff’s operations. The Complaint alleges that the policy’s virus exclusion does not apply because the virus was not on the premises, but rather that “Plaintiff’s loss was caused by a pandemic.” Complaint at ¶83. The class consists of Missouri and nationwide subclasses of plaintiffs who owned or operated eating or drinking establishments whose business interruption claims were denied under an issued Intrepid policy. *Id.* at ¶108.

A restaurant filed a class action complaint against Travelers Casualty Insurance Company in federal court (S.D.N.Y.) seeking coverage in connection with business losses sustained due to COVID-19. Plaintiff alleges civil authority orders issued by the State of New York “prohibited Plaintiff’s business from being open and prohibited access to Plaintiff’s business.” Complaint at ¶26. The complaint asserts that as a result of the civil authority orders, Plaintiff has suffered losses covered under the all-risk policy’s Business Personal Property, Business

Income, and Civil Authority provisions. Plaintiff alleges the policy's virus exclusion is not applicable, because Plaintiff's loss was a result of "the civil authority orders issued by the State of New York, and similar civil authority orders issued to prevent the spread of COVID-19." *Id.* at ¶4.

The owner of a dental practice in Michigan sued Aspen American Insurance Company in Michigan state court (Wayne County) on behalf of itself and all others similarly situated asserting claims for declaratory relief and breach of contract. The policy allegedly provides practice income, extra expense, extended practice income, and civil authority coverage. Complaint at ¶28. The plaintiff alleges that its claim, and the claims of other insured Michigan dentists similarly situated, was denied. *Id.* at ¶¶31-32. The class consists of dental professionals and practices located in Michigan who are insured under Aspen policies and suffered lost business income as a result of the COVID-19 pandemic. *Id.* at ¶34.

A restaurant in Buffalo, New York sued Erie Insurance Group in federal court (W.D.N.Y.) on behalf of itself and all others similarly situated seeking a declaration that the defendant's policies provide coverage to the plaintiff and the class for loss due to the presence of COVID-19 and suspension orders issued in response to the dangerous physical conditions caused by the presence of COVID-19. Complaint at ¶¶40-42. The "all-risk" policy allegedly provides Income Protection, Extra Expense, and Civil Authority coverage. The class is defined as those "who suffered a suspension and/or reduction of business at the covered property related to COVID-19 and/or the action of a civil authority in response to COVID-19" *Id.* at ¶50.

Retailer America's Kids filed a class action complaint against Zurich American Insurance Company in federal court (N.D. Ill.) for business interruption losses related to COVID-19 and related civil authority orders issued by several states and local governments. Plaintiff alleges it was required to "suspend business operations at each of its retail locations as a result of the spread of COVID-19 in the areas surrounding its insured premises and/or the Closure Orders." Complaint at ¶47. The Complaint asserts the "all-risk" policy's Business Income, Extra Expense, Civil Authority, and Microorganism provisions provide coverage for such losses. *Id.* at ¶2. Plaintiff alleges the Microorganism provision covers the loss of business income "due to the necessary suspension of Plaintiff's operations from direct physical loss of or damage to coverage property caused by microorganisms," including viruses, and therefore covers loss from the pandemic. *Id.* at ¶¶30-32.

An Illinois dental practice filed a class action lawsuit against The Hartford Financial Services Group and Twin City Fire Insurance Company in federal court (S.D. Ill.) alleging the insurer wrongfully denied its claim for business interruption losses due to Illinois' COVID-19 closure orders. The complaint alleges that the policy's virus exclusion is not applicable to the losses that Plaintiff has suffered, stating "there is no evidence that the virus has ever been in [Plaintiff's] premises" and the loss was caused by the "pandemic and, as recommended by the CDC and dental organization, the need to prevent it from spreading" to others. Complaint at ¶77. Plaintiff seeks declaratory relief and damages in connection with claims for breach of contract and bad faith.

Plaintiff Firenze Ventures has filed a class action complaint against Twin City Fire Insurance Company in Illinois state court (Cook County) seeking coverage for COVID-19 related business interruption losses. The class complaint alleges Plaintiff and members of the putative class have been "forced to halt ordinary operations, resulting in substantial lost revenues" as a result of the government closure orders issued in response to the



pandemic. Complaint at ¶31. Plaintiffs allege that the policy affords coverage for pandemic related loss under the policy's civil authority provision, and damage caused by the virus under the policy's "virus coverage," which allegedly covers "loss or damage by 'fungi', wet rot, dry rot, bacteria and virus." Complaint at ¶¶17-18. The class complaint seeks declaratory relief, as well as class wide damages in connection with claims for breach of contract, bad faith, and violation of Illinois Consumer Fraud Act.

The Evanston Grill filed a class action complaint against State Farm Fire and Casualty Co. in Illinois state court (Cook County) seeking coverage for COVID-19 losses under the issued "all-risk" policy. The Complaint asserts as a result of the closure orders issued by the State of Illinois, the public was "prohibited from accessing Plaintiff's restaurant, thereby causing the necessary suspension of its operations." Complaint at ¶13. Plaintiff seeks damages in connection with breach of contract and bad faith claims handling. Plaintiff alleges the policy's virus exclusion is inapplicable as "Plaintiff's loss results directly from the Closure Orders," and not the presence of COVID-19. *Id.* at ¶¶37-39. The class complaint seeks declaratory relief, as well as class wide damages in connection with claims for breach of contract and bad faith.

The owner of a restaurant and banquet hall in Pennsylvania sued National Fire & Marine Insurance Company individually and on behalf of all others similarly situated in federal court (E.D. Pa.), asserting claims for declaratory relief and breach of contract. The "all risk" policy at issue allegedly provided business income, extra expense, and civil authority coverage. Complaint at ¶¶16-24. The policy contains an exclusion for "loss or damage caused by or resulting from any virus, bacterium, or other microorganism." *Id.* at ¶44. The complaint alleges that the defendant denied the plaintiff's claim for coverage, in part based on the policy's virus exclusion, and that it has or will similarly refuse to honor its obligations under the policies purchased by other members of the class. *Id.* at ¶¶4-5, 40. The class is defined as all policyholders in the U.S. who purchased business interruption coverage from the defendant, and who have been denied coverage after being ordered to shut down or otherwise limit their business operations in response to the pandemic. *Id.* at ¶57.

An interior design business in California sued Chubb Ltd. and Ace Fire Underwriters Insurance Company individually and on behalf of all others similarly situated in federal court (E.D. Pa.), asserting claims for declaratory relief and breach of contract. The "all risk" policy at issue allegedly provided business income, extra expense, and civil authority coverage. Complaint at ¶¶16-26. The policy contains an exclusion for losses caused by "any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease." *Id.* at ¶50. The Complaint alleges that the defendant denied the plaintiff's claim for coverage, in part based on the policy's virus exclusion, and has or will similarly refuse to honor its obligations purchased by other members of the class. *Id.* at ¶¶4-5, 44-45. The class is defined as all policyholders in the U.S. who purchased business interruption coverage from the defendant, and who have been denied coverage after being ordered to shut down or otherwise limit their business operations in response to the pandemic. *Id.* at ¶63.

The owners of hair salons and a restaurant in Pennsylvania and Virginia sued Erie Insurance Exchange in federal court (E.D. Pa.) individually and on behalf of all others similarly situated, asserting claims for declaratory relief and breach of contract. The "all risk" policies at issue allegedly provide business income, extra expense, civil authority, and sue and labor coverage, and do not contain a virus exclusion. Complaint at ¶¶24-36. The Complaint alleges that all of the plaintiffs suffered business losses due to the presence of COVID-19 on their

properties and civil closure orders, but that the insurer denied the claim for two plaintiffs and told the third plaintiff that it would not pay for such losses under its policy. *Id.* at ¶¶48-51. The plaintiffs for whom the insurer denied coverage seek to represent nationwide breach-of-contract subclasses, and the third plaintiff seeks to represent nationwide declaratory relief subclasses. *Id.* at ¶53.

The owner of a bar and restaurant in Pennsylvania sued Erie Insurance Exchange in Pennsylvania state court individually and on behalf of all others similarly situated (Allegheny 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 ¶¶25-29. The Complaint alleges that the insurer verbally denied the plaintiff’s claim for coverage, and has and will continue to refuse to pay its insureds for business income losses suffered due to COVID-19, civil authority orders, and any efforts to prevent further damage or minimize the suspension of business and continue operations. *Id.* at ¶¶34-37. The class is defined as all Pennsylvania citizens that have entered into policies with the insurer that provide business income, civil authority, and extra expense coverage who have suffered losses due to civil authority orders to stop the spread of COVID-19. *Id.* at ¶41.

The owner of retail food stores filed a class action lawsuit against Farmers Insurance Group and its subsidiaries 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 all-risk policy’s virus exclusion does not “preclude coverage for the governmental orders pursuant to which Plaintiff and Class members suspended their business operations” and that the orders “therefore constitute a covered ‘direct physical loss’ under the Policy.”

A San Francisco café filed a class action lawsuit against The Hanover Insurance Group 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’s virus exclusion is not applicable because the café’s losses “were not caused by ‘virus, bacterium or other microorganism’” and instead were “solely the result of precautionary measures taken by Plaintiff at the behest of California and the federal government to prevent the prospective spread of COVID-19.” The complaint seeks, among other things, a declaration that the “COVID-19 pandemic and the corresponding response by civil authorities to stop its spread triggers coverage, has caused physical property loss and damage to the insured property, provides coverage for future civil authority orders that curtail policyholders’ business operations, and finds that Defendants are liable for the corresponding business losses suffered by policyholders.”

A restaurant filed a class action lawsuit against AmGuard 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 cites to California Insurance Commissioner Ricardo Lara’s notice reminding insurers of their obligation to “conduct and diligently pursue a thorough, fair, and objective investigation of the reported claim,” and asserts that notwithstanding, AmGuard’s denial letter “appears to be a form letter sent in response to business income claims arising from the Orders. It is clear from the letter that there was no investigation of Plaintiff’s claim prior to the denial.”

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](mailto:lfoggan@crowell.com)

**Adam J. Singer**

Counsel – Washington, D.C.

Phone: +1.202.688.3508

Email: [asinger@crowell.com](mailto:asinger@crowell.com)