

CLIENT ALERT

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

March 23, 2021

Courts Dismiss COVID-19 Business Interruption Claims

On March 19, 2021, the district court for the Western District of Michigan granted Cincinnati Insurance Company's motion to dismiss St. Julian Wine Co., Inc.'s complaint for losses sustained because of COVID-19 and the accompanying government restrictions. Even though the court found that the winery suffered losses from the virus' presence throughout the community and the government orders to slow its spread, both "had no connection to the physical condition of St. Julian's property, or to any physical damage or loss." Order at 5. Without tangible, physical damage, the court held coverage cannot be triggered under the policy's plain language. *Id.* at 6. Additionally, the plaintiff failed to plead the property was physically altered or that it was unable to use its property. *Id.* The court also rejected the plaintiff's argument that a lack of a virus exclusion provides coverage, holding that the absence of an exclusion is inconsequential when physical loss or damage has not been pled and "[a] non-existent provision does not alter the unambiguous language of the Policy." *Id.* at 8.

On March 18, 2021, a magistrate judge in the district court for the Southern District of New York recommended that the court grant Sentinel Insurance Company, Ltd.'s motion to dismiss a dental practice's COVID-19 business interruption claim with prejudice. The court found that the dental office lost use of its property for a short time because of the pandemic and the resulting shutdown orders. Order at 13. However, the court held that there must be "direct physical loss of or physical damage to property" to trigger business income coverage, not just loss of use. *Id.* at 14, 16. Because the plaintiff did not plead it was "completely denied access," the court held that the insurer did not owe civil authority coverage either. *Id.* at 30. Lastly, because the virus can be removed by routine cleaning and sanitizing, any contamination from the virus did not cause a "direct physical loss." *Id.* at 20.

On March 17, 2021, the Michigan circuit court for Wayne County granted Property-Owners Insurance Company's motion to dismiss a COVID-19 business interruption complaint filed by three restaurant operating groups. The court stated it was following "the overwhelming majority of courts" in holding that "the plain language of the insurance policy and all policy provisions taken as a whole require that there must be some direct physical change to or 'some tangible damage' to the property to be entitled to Business Interruption loss benefits." Order at 9 (citation omitted). According to the court, "[a]ny other interpretation of the word 'physical' . . . would render the word 'physical' meaningless." *Id.* The court therefore rejected plaintiffs' direct physical loss argument. *Id.* at 9–10. The court also held that plaintiffs' business interruption and civil authority claims were precluded by the policy's virus exclusion, which excluded any "loss or damage caused by or resulting from virus." *Id.* at 9–10, 14.

On March 12, 2021, the district court for the District of New Jersey granted AmGUARD Insurance Company's and Republic-Franklin Insurance Company's motion to dismiss several restaurant groups' COVID-19 business interruption complaint. The court held that the virus exclusion in plaintiffs' policies, which stated that defendants "will not pay for loss or damage caused by or resulting from any virus," was not ambiguous and excluded plaintiffs' losses due to COVID-19 civil authority orders. Order at 14–15.

On March 17, 2021, the district court for the District of New Jersey granted American Guarantee and Liability Insurance Company's motion to dismiss franchise owners' COVID-19 business interruption complaint. The group owns restaurant and hospitality franchises, including Wendy's, T.G.I. Friday's, Marriott, and Hilton and sought losses because of the pandemic and related government shutdown orders. Order at 2. The court held there was no business income coverage triggered because the complaint lacked sufficient evidence of physical loss or damage to the properties; general statements about the presence of the coronaviruses on surfaces and in the air were not enough. *Id.* at 3. The stay-at-home orders deemed the restaurants "essential" businesses that could remain open, though with restrictions. *Id.* The claim was also excluded under the virus exclusion. *Id.* at 3 n.3.

On March 18, 2021, a magistrate judge in the district court for the Western District of North Carolina recommended that the court grant Cincinnati Insurance Company's motion to dismiss a COVID-19 business interruption complaint filed by more than a dozen restaurant management companies. Because the policy covered "direct physical loss[es]" and "physical damage," the policy unambiguously required "actual, physical damage to the covered premises." Memorandum and Recommendation at 10. Plaintiffs failed to allege such damage, the court reasoned, because "COVID-19 harms people and not property." *Id.* at 13. Similarly, the court found that "executive orders which reduce or suspend business operations to slow the spread of the virus do not cause physical damage or loss to insured property" did not constitute a direct physical loss and was not covered by the policy's civil authority provision because "public health officials never revoked the authorization for employees to prepare food for take-out or to have customers enter to pick up food." *Id.* at 12; *see also id.* at 14–15.

On March 18, 2021, the district court for the Western District of Pennsylvania granted Travelers Property Casualty Company of America's motion for judgment on the pleadings of a medical center's proposed class action for COVID-19 related insurance claims. The policy's virus exclusion precluded coverage for the medical center's claims. Order at 12. Failing to show it suffered any physical loss or damage, the plaintiff did not meet the standards for pleading a direct physical loss. *Id.* at 9. With only the lost use of property from the governor's orders and the COVID-19 pandemic, the court found the plaintiff did not adequately allege the property was "uninhabitable" or that there was damage to surrounding properties. *Id.* at 9–10. The orders did not completely prohibit access to the property because of damage to a surrounding property; in fact, "there was no physical damage at all." *Id.* at 10.

On March 16, 2021, the district court for the District of Minnesota granted Florists' Mutual Insurance Company's motion to dismiss a COVID-19 business interruption claim filed by a retail floral and garden products business. The court found that the policy does not provide coverage for losses resulting from COVID-19 closure orders where the plaintiff failed to allege any structural damage to property or that the property had been contaminated or otherwise injured. Order at 12.

On March 10, 2021, the district court for the District of New Jersey granted Harleysville Insurance Company's motion to dismiss a gym's COVID-19 business interruption claim, finding that the policy's unambiguous virus exclusion applied to bar coverage. Order at 13. The court rejected the plaintiff's argument that applying the virus exclusion would not comport with its reasonable expectations because no ambiguity existed in the exclusion, such that the parties' reasonable expectations were irrelevant. *Id.* at 15-16.

On March 18, 2021, the district court for the Western District of Kentucky granted Cincinnati Insurance Company's motion to dismiss an oral health center's COVID-19 business interruption claim. The court concluded that physical loss under the policy means "destruction or ruin produced by the forces or operation of physics," Order at 7, and that the plaintiff's claim for civil

authority coverage failed because the policy requires a tangible loss to property other than the insured property, which the plaintiff failed to identify, and because there was no allegation that the plaintiff lost access to its business due to damage to surrounding property. *Id.* at 9.

On March 18, 2021, the district court for the District of New Jersey granted Harleysville Insurance Company’s motion to dismiss a clothing store’s COVID-19 business interruption claim. The court concluded that the policy’s virus exclusion barred coverage, finding it clear that COVID-19 closure orders were inextricably connected to the coronavirus. Order at 11.

On March 12, 2021, the district court for the Southern District of Ohio granted Philadelphia Indemnity Insurance Company’s motion to dismiss several preschools’ COVID-19-related loss claim. Because the plaintiffs failed to plausibly allege any “direct physical loss or damage” to trigger coverage, the court held both the breach of contract and bad faith claims failed. Order at 7, 14. Simply because the policies did not define certain terms did not make the terms ambiguous; the policies required more than a “loss of use” of the insured premises. *Id.* at 11–12. The court held that “there must be a material or perceptible destruction, harm, or ruin” to the property, and to require anything less would make a provision “nonsensical.” *Id.* at 12–14.

New Business Interruption Class Actions:

A hotel owner and operator filed a class action against Liberty Mutual Fire Insurance Company in federal court (W.D. Wash) for breach of contract and declaratory relief. Plaintiff’s all-risk policy allegedly provided, among other things, business income and extra expense coverage. Complaint at ¶¶ 4.1, 4.4. The complaint alleges plaintiff suffered a direct physical loss because state and local COVID-19 related orders rendered plaintiff “unable to operate its business” and because “access to premises other than [p]laintiff’s were also prohibited and limited.” *Id.* at ¶¶ 4.6–4.8. Plaintiff proposes three statewide classes based on Plaintiff’s three theories of recovery—a “Direct Physical Loss or Damage Class,” a “Business Interruption Coverage Class” and an “Extra Expenses Coverage Class.” *Id.* at ¶¶ 5.2–5.4.

A dentistry practice filed a class action against Citizens Insurance Company in federal court (W.D. Wash.) for breach of contract and declaratory relief. Plaintiff’s all-risk policy allegedly provides business income, extra expense, and civil authority coverage. Complaint at ¶¶ 10, 14. The complaint alleges plaintiff’s losses are covered because “the presence of people infected with or carrying COVID-19 particles,” “the presence of any COVID-19 aerosolized or suspended droplets or particles in the air or otherwise circulating in an indoor environment,” and “[l]oss of functionality of property that has not been physically altered” all constitute “direct physical damage” or loss of property under the policy. *Id.* at ¶¶ 29–32. Plaintiffs propose eight different nationwide classes based on the different policy provisions at issue and the type of relief sought, each with a corresponding Washington statewide subclass. *Id.* at ¶ 68.

Two dentistry practices filed a class action against Sentinel Insurance Company in federal court (W.D. Wash.) for breach of contract and declaratory relief. Plaintiffs’ all-risk policies allegedly provide business income, extra expense, and civil authority coverage. Complaint at ¶¶ 11, 15. The complaint alleges plaintiffs’ losses are covered because “the presence of people infected with or carrying COVID-19 particles,” “the presence of any COVID-19 aerosolized or suspended droplets or particles in the air or otherwise circulating in an indoor environment,” and “[l]oss of functionality of property that has not been physically altered” all constitute “direct physical damage” or loss of property under the policy. *Id.* at ¶¶ 35–37. Plaintiffs propose eight different nationwide classes based on the different policy provisions at issue and the type of relief sought, each with a corresponding Washington statewide subclass. *Id.* at ¶ 80.

Three dentists filed a class action against Aspen American Insurance Company in federal court (W.D. Wash.) for breach of contract and declaratory relief. Plaintiffs' all-risk policies allegedly provide practice income, extra expense, and civil authority coverage. Complaint at ¶¶ 12, 16. The complaint alleges plaintiffs' losses are covered because "the presence of people infected with or carrying COVID-19 particles," "the presence of any COVID-19 aerosolized or suspended droplets or particles in the air or otherwise circulating in an indoor environment," and "[l]oss of functionality of property that has not been physically altered" all constitute "direct physical damage" or loss of property under the policy. *Id.* at ¶¶ 33–37. Plaintiffs propose eight different nationwide classes based on the different policy provisions at issue and the type of relief sought, each with a corresponding Washington statewide subclass. *Id.* at ¶ 80.

The owners and operators of several restaurant, bar, and catering businesses filed a class action against National Surety Corporation in federal court (W.D. Wash.) for breach of contract and declaratory relief. Plaintiffs' all-risk policy allegedly provides, among other things, business income, extra expense, civil authority, communicable disease, and event postponement and cancellation expense coverage. Complaint at ¶¶ 12, 20. The complaint alleges plaintiff's losses are covered because "the presence of people infected with or carrying COVID-19 particles," "the presence of any COVID-19 aerosolized or suspended droplets or particles in the air or otherwise circulating in an indoor environment," and "[l]oss of functionality of property that has not been physically altered" all constitute "direct physical damage" or loss of property under the policy. *Id.* at ¶¶ 34–37. Plaintiffs propose sixteen different nationwide classes based on the different policy provisions at issue and the type of relief sought, each with a corresponding Washington statewide subclass. *Id.* at ¶ 81.

The owner and operator of a salon filed a class action complaint against Hartford Casualty Insurance Company in federal court (S.D. Fla.) for declaratory relief and breach of contract. The "all risk" policy allegedly provides business interruption, extra expense, civil authority, and limited fungi, bacteria or virus coverage. Complaint at ¶¶ 5-7, 44. The Complaint alleges that the plaintiff "suffered direct physical loss, direct physical damage, and actual loss to its property as a result of contamination by the coronavirus, and necessary physical restrictions and alterations undertaken to mitigate further property loss and damage." *Id.* at ¶ 39. The proposed nationwide classes are defined as: (1) "[a]ll persons and entities with Business Income coverage under a property insurance policy issued by Defendant, which suffered a suspension of business due to the coronavirus, and for which Defendant has denied a claim for the losses or have otherwise failed to acknowledge, accept as a covered loss, or pay for the covered losses;" (2) "[a]ll persons and entities with Civil Authority coverage under a property insurance policy issued by Defendant, which suffered a loss of Business Income and/or Extra Expense caused by an action of a civil authority, and for which Defendant has denied a claim for the losses or has otherwise failed to acknowledge, accept as a covered loss, or pay for the covered losses;" (3) "[a]ll persons and entities with Extra Expense coverage under a property insurance policy issued by Defendant, which sought to avoid or minimize the suspension of business caused by the coronavirus and/or the actions of civil authorities in response to the coronavirus, and for which Defendant has denied a claim for the expense or has otherwise failed to acknowledge, accept as a covered expense, or pay for the covered expenses;" and (4) "[a]ll persons and entities with Virus Coverage Endorsement under a property insurance policy issued by Defendant, which suffered a suspension of business and sought to avoid or minimize the suspension of business caused by the coronavirus and/or the actions of civil authorities in response to the coronavirus, and for which Defendant has denied a claim for the losses and expenses or has otherwise failed to acknowledge, accept as a covered expense, or pay for the covered expenses the Time Element losses suffered." *Id.* at ¶ 85.

The operator of six restaurants and a bar filed a class action complaint against Cincinnati Insurance Company in the Eastern District of North Carolina for declaratory relief and breach of contract. The plaintiffs' "all risks" policy allegedly provides business income, extra expense, civil authority, and general liability coverage and no virus or government shutdown order exclusion.

Complaint ¶¶ 8–9, 53, 58. The Plaintiffs assert that the insurer “has reflexively denied claims made by its policyholders.” *Id.* ¶ 10. The proposed class would include “[a]ll policyholders in the State of North Carolina who purchased a policy issued by defendant The Cincinnati Insurance Company with coverage for Business Income, Extra Expense, and/or Civil Authority, whose policy does not contain a virus exclusion, and whose operations were suspended, in whole or in part, by a Government Order during the period in which the purchased policy was in effect.” *Id.* ¶ 72.

New Business Interruption Suits Against Insurers:

The owner and operator of a diner sued Erie Insurance Property and Casualty Company in Pennsylvania state court (Allegheny County) for breach of contract, declaratory judgment, and injunctive relief. Plaintiff’s all-risk policy allegedly provides business interruption, income protection and civil authority coverage. Complaint at ¶¶ 5, 7, 10. The complaint alleges that the coronavirus and related state government orders caused damage to plaintiffs’ property because plaintiff’s owners came into contact with individuals “contaminated with COVID-19” and because plaintiff was ordered to close its business and furlough employees. *Id.* at ¶ 18, 20–24.

The owner and operator of two chiropractic weight loss and nutrition centers sued State Farm Fire and Casualty Company in Pennsylvania state court (Washington County) for breach of contract, declaratory judgment, and injunctive relief. Plaintiff’s policy allegedly provides business interruption, income protection and civil authority coverage. Complaint at ¶¶ 5, 10. The complaint alleges that the coronavirus and related state government orders caused damage to plaintiffs’ property because plaintiff’s owners came into contact with individuals “contaminated with COVID-19” and because plaintiff was ordered to close its business and furlough employees. *Id.* at ¶ 18, 20–24.

A catering company sued Twin City Fire Insurance Company in Rhode Island state court (Providence County). Plaintiff’s policy allegedly provides business interruption and bacteria and virus coverage. Complaint at ¶¶ 4–5. Although the two-page complaint does not specify the type of claim it seeks to assert, the complaint alleges, without providing any detail, that plaintiff suffered covered losses and that Twin City “refused to respond to Plaintiff’s lawful demand for compensation. *Id.* at ¶¶ 6–8.

The owners and operators of various hotels sued FM Global Insurance Company in Rhode Island state court (Providence County) for declaratory judgment, breach of the covenant of good faith and fair dealing, and bad faith refusal to pay a claim. Plaintiffs’ all-risk policy allegedly provides, among other things, business interruption, attraction property, civil authority, communicable disease, and leasehold interest coverage. Complaint at ¶¶ 162, 165, 167, 171, 176, 179, 181. The complaint asserts FM Global engaged in bad faith claims handling by conducting an allegedly “pretextual” claims investigation and failed to “consider relevant facts relating to Plaintiffs’ *entire* claim under the Policy language.” *Id.* at ¶ 199 (emphasis in original).

A technology services company sued Zurich American Insurance Company in Texas state court (Dallas County) for breach of contract, breach of implied covenant of good faith and fair dealing, unfair and deceptive trade practices, prompt payment, declaratory relief, and anticipatory breach of contract. Plaintiff’s all-risk policy allegedly provides property damage, gross earnings, gross profit, extra expense, civil authority, contingent time element, protection and preservation of property, tenants prohibited access, and professional fees coverage. Complaint at ¶¶ 32, 35. The complaint alleges plaintiffs suffered covered losses due to “the COVID-19 pandemic and related government orders” because the COVID-19’s presence “on solid surfaces and

in the air” allegedly caused property damage and because civil authority orders prohibited access to plaintiff’s office buildings. *Id.* at ¶¶ 69, 79, 93.

An operator of various children’s day care centers sued Starr Surplus Lines Insurance Company in Texas state court (Dallas County) for breach of contract, breach of the implied duty of good faith and fair dealing, and prompt payment. Plaintiff’s all-risk policy allegedly provides, among other things, property damage, time element, civil authority, and ingress/egress coverage. Complaint at ¶¶ 10–12. The complaint alleges plaintiff suffered a covered “direct physical loss” due to the “danger of transmission and exposure to the COVID-19 pandemic” and related state and local governments’ business closure orders. *Id.* at ¶¶ 29–30. The complaint also alleges that Starr “knew or should have known that it had no reasonable basis” for denying plaintiff’s claims under the policy. *Id.* at ¶ 37.

A resort and casino sued Steadfast Insurance Company in Washington state court (Grays Harbor County) for breach of contract, insurance bad faith, and Washington Consumer Protection Act violations. Plaintiff’s all-risk policy allegedly provides property, business interruption, and time element coverage. Complaint at ¶ 3.6. The complaint alleges plaintiff suffered covered losses due to temporary closure orders by state and tribal governments. *Id.* at ¶¶ 3.10–3.14.

Owners and operators of various senior living facilities sued Continental Casualty Company in Washington state court (King County) for breach of contract, breach of the implied covenant of good faith and fair dealing, Washington Consumer Protection Act violations, and declaratory relief. Plaintiffs’ all-risks policy allegedly provided real and personal property, business interruption, extra expense, ingress/egress, civil authority, and disease contamination coverage. Complaint ¶¶ 5.2–5.14. The complaint alleges plaintiffs suffered covered physical losses because COVID-19’s presence at plaintiffs’ properties “made it dangerous to breathe, and also attached as ‘fomites’ to walls, floors, tables, fixtures and other surfaces.” *Id.* ¶ 6.2. The complaint also alleges Continental failed to conduct a reasonable investigation and unreasonably denied plaintiffs any insurance benefits. *Id.* at ¶ 8.3.

The owner and operator of the Seattle Space Needle building sued North American Elite Insurance Company in federal court (W.D. Wash.) for breach of contract and declaratory judgment. Plaintiff’s all-risk policy allegedly provided, among other things, property damage, gross earnings, extra expense, attraction property, ingress/egress, communicable disease, and civil authority coverage. Complaint at ¶ 19. The complaint alleges that rather than accepting coverage for plaintiff’s COVID-19 related claims, North American Elite submitted a series of clarifying questions and suggested that certain policy provisions did not apply. *Id.* at ¶¶ 37, 40.

The operators of hotels, restaurants, and conference and event centers sued Fireman’s Fund Insurance Company in California state court (Orange County) for declaratory relief, breach of contract, and breach of the covenant of good faith and fair dealing. The “all risk” policy allegedly provides business income, extended business income, civil authority, crisis business income, extra expense, and communicable disease extra expense coverage. Complaint at ¶ 28. The Complaint alleges that the coronavirus “has caused ‘direct physical loss of or damage to’ Plaintiffs’ Covered Properties, in that SARS-CoV-2 has caused a distinct, demonstrable, physical alteration of the Covered Properties by contaminating the air within and surrounding the buildings, the surfaces of the buildings themselves, and countless surfaces within them, turning them from safe to unsafe and deadly, capable of spreading the novel coronavirus.” *Id.* at ¶ 46.

The owner and operator of the Los Angeles Lakers sued Federal Insurance Company in federal court (C.D. Cal.) for declaratory relief, breach of contract, and breach of the covenant of good faith and fair dealing. The “all risk” policy allegedly provides

business interruption, extra expense, and civil authority coverage. Complaint at ¶ 13. The Complaint alleges that the “presence of coronavirus at the Staples Center damaged the property, dispersing through the air and affixing to fixtures such as seating, concession areas, food service facilities, toilets, plumbing fixtures and systems, locker rooms, and training facilities, playing surfaces and equipment, contaminating key building systems, and damaging surfaces throughout the building,” *id.* at ¶ 60, which made the Lakers “unable to invite fans into the Staples Center and thus are unable to use their property for its intended purpose and suffered physical loss to the property.” *Id.* at ¶ 61.

A restaurant sued Nationwide Mutual Insurance Company and Allied Insurance Company of America in Colorado state court (Pitkin County) for declaratory relief, breach of contract, bad faith, and violation of C.R.S. §§ 10-3-1115 and 10-3-1116. The “all risk” policies allegedly provide business income, extra expense, and civil authority coverage. Complaint at ¶¶ 69, 74. The Complaint alleges that the plaintiff “incurred, and continues to incur, business interruption losses due to civil orders prohibiting or restricting access to the restaurant and other nearby businesses.” *Id.* at ¶ 77.

The manager of entities that own hotels sued Ace American Insurance, Guideone National Insurance Company, Endurance American Specialty Insurance Company, Steadfast Insurance Company, National Fire & Marine Insurance Company, Ironshore Specialty Insurance Company, Evanston Insurance Company, Continental Casualty Company, Princeton Excess & Surplus Lines Insurance Company, Everest Indemnity Insurance Company, Hallmark Specialty Insurance Company, HDI Global Specialty SE, Western World Insurance Company, Navigators Specialty Insurance Company, Arch Specialty Insurance Company, Indian Harbor Insurance Company, Colony Insurance Company, Westchester Surplus Lines Insurance Company, QBE Specialty Insurance Company, General Security Indemnity Company of Arizona, and Certain Underwriters at Lloyd's London in Hawai'i state court (Second Circuit) for declaratory relief and anticipatory breach of contract. The “all risk” policies allegedly provide business interruption, extra expense, decontamination cost, civil authority, and ingress/egress coverage. Complaint at ¶¶ 75-85. The Complaint alleges that the presence of coronavirus “including in infected guests and employees at the Insured Hotels, has caused and is continuing to cause physical loss of or damage to the Insured Hotels.” *Id.* at ¶ 56. The insurers allegedly have not responded to the plaintiff's claim for coverage which “sent a clear message that they do not intend to pay for all of, or indeed any of, [the plaintiff's] significant costs and losses covered under the Policies.” *Id.* at ¶ 96.

A retailer, manufacturer, and distributor sued Zurich American Insurance Company in Indiana state court (Elkhart County) for declaratory relief and breach of contract. The “all risk” policies allegedly provide time element, extra expense, contingent time element, civil authority, decontamination cost, and ingress/egress coverage. Complaint at ¶ 58. The Complaint alleges that the “presence of COVID-19 in and on property, including in indoor air, on surfaces, and on objects, causes direct physical harm to and altering property and otherwise making it incapable of being used for its intended purpose.” *Id.* at ¶ 29.

The operators of restaurants sued Depositors Insurance Company, Allied Insurance Company of America, and Nationwide Mutual Insurance Company in Iowa state court (Polk County) for declaratory relief, breach of contract, and bad faith. The “all risk” policies allegedly provide business income and civil authority coverage. Complaint at ¶¶ 26, 53. The Complaint alleges that the closure of each of the plaintiffs' facilities “is a direct physical loss, including physical loss of access, customers, use, and utilization for their intended purposes, and is not due to the presence of Coronavirus/Covid-19 in Plaintiffs' facilities.” *Id.* at ¶ 66.

The owner and operator of a casino, hotels, convention center, restaurants, arcade, bowling center, and water park sued Zurich American Insurance Company in Iowa state court (Des Moines County) for declaratory relief and breach of contract. The “all risk” policy allegedly provides time element and extra expense coverage. Complaint at ¶¶ 16-19. The Complaint alleges that

Iowa's COVID-19 closure order caused direct physical loss of or damage to Plaintiff's property "by precluding Plaintiff from conducting its operations, precluding customers from patronizing the business, and otherwise frustrating the intended use of the property at Plaintiff's businesses, all thereby causing the suspension, cessation and/or slowdown of Plaintiff's business activities during a period of restoration." *Id.* at ¶ 48

The owner and operator of 346 restaurants sued North American Elite insurance Company in New York state court (Albany County) for a declaratory judgment, breach of contract, and unjust enrichment. Its "all-risk" commercial policy allegedly contained communicable disease response, protection and preservation of property, and time element coverage. Complaint ¶¶ 3, 15–17. It alleges the closure orders forced it "to suspend or significantly limit its operations." *Id.* ¶ 57.

A Broadway developer and marketer sued Federal Insurance Company for breach of contract and declaratory judgment in the district court for the Southern District of New York. The plaintiff purchased a commercial property insurance policy with business income and time element coverage and allegedly no virus exclusion. Complaint ¶¶ 1, 5, 41. The plaintiff asserts "it is statistically certain" the coronavirus was present on its property and that the insurer's denial "contravenes the plain meaning of the Policy language." *Id.* ¶¶ 9, 33.

The owner and operator of three hotels sued North American Elite Insurance Company in New York state court (Westchester County) for declaratory relief, breach of contract, breach of the covenant of good faith and fair dealing, and violating the New York Deceptive Practices Act. The plaintiffs allege their policies include communicable disease response, interruption by communicable disease, time element, extra expense, attraction property, contingent time element, ingress/egress, and order of civil or military authority coverage. Complaint ¶ 13. The plaintiffs allege that the insurer failed to meaningfully investigate their claim before denying coverage under the contaminants exclusion. *Id.* ¶¶ 14, 17. But according to the plaintiffs, COVID-19 is not a contaminant, and so the exclusion "clearly" does not apply. *Id.* ¶ 17.

A commercial real estate owner sued Westport Insurance Corporation for breach of contract and declaratory judgment in the Southern District of New York. The plaintiff's "all risks" policy allegedly contains rental income, civil authority, attraction property, ingress and egress, communicable disease, and extra expense coverage. Complaint ¶¶ 3, 52. According to the plaintiff, it had confirmed COVID-19 cases at its properties. *Id.* ¶ 43. Even so, the plaintiff alleges the insurer denied the claim. *Id.* ¶ 89.

A fitness club chain sued Nova Casualty Company in North Carolina state court (Wake County) for breach of contract and declaratory judgment. The plaintiffs purchased commercial property insurance policies that allegedly contained business income and civil authority coverage and a virus exclusion. Complaint ¶¶ 6, 37, 42, 59. The plaintiffs claim that under the government orders, they "were required to close their facilities" and "could not allow customers or employees to enter their premises, nor could they operate their businesses in any capacity." *Id.* ¶¶ 26–27. Although the insurer denied the claim under the virus exclusion, the plaintiffs argue that their losses were caused not by the virus but from the civil authority orders, and so coverage should be afforded. *Id.* ¶¶ 58, 64. But even if the virus caused their losses, the plaintiffs assert that the insurer should be estopped from enforcing it. *Id.* ¶ 66.

The operator of 300 car washes sued North American Elite Insurance Company for breach of contract and declaratory judgment in New York state court (Kings County). Under its "all risk" policies, the plaintiff asserts it had time element, civil authority, interruption by communicable disease, and attraction property coverage. Complaint ¶¶ 6, 10–11. The policies do not include a pandemic exclusion but do contain a contaminants exclusion. *Id.* ¶¶ 9, 111. According to the plaintiff, local government authorities "actively intervened" to ensure customers could not access the plaintiff's property. *Id.* ¶ 91.

Cincinnati Insurance Files COVID-19 Declaratory Judgment Complaint:

Cincinnati Insurance sued several restaurant management companies in federal court (W.D. Tex.) for declaratory judgment. The complaint seeks a declaration that Cincinnati does not owe defendants for claims under their policy's business income, extra expense, civil authority, and dependent property coverage provisions. Complaint at ¶ 1. Specifically, Cincinnati Insurance argues that defendants did not suffer a direct physical loss or damage to their properties, that no civil authority order prohibited access to their properties, and that the policy's acts or decisions and ordinance or law exclusions precluded coverage for enforcement of COVID-19 business closure orders that regulated the defendants' premises. *Id.* at ¶¶ 30–34.

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