

CLIENT ALERT

Insurers' COVID-19 Notepad: What You Need to Know Now (Week of November 30)

Nov.30.2020

Federal Courts Dismiss COVID-19 Business Interruption Claims

On November 30, 2020, the U.S. District Court for the Southern District of Iowa granted Illinois Casualty Company's motion for judgment on the pleadings in a COVID-19 business interruption claim filed by restaurants and bars. Finding the policy's requirement that an insured suffer "direct physical loss of or damage" to property unambiguous, the court found that the phrase "requires a physical invasion" and that "loss of use is insufficient to trigger coverage without physical damage to the insured properties." Order at 15. Because the plaintiffs pleaded a loss of use, the court concluded that they failed to allege facts sufficient to trigger business income or extra expense coverage. *Id.* The court also determined that the plaintiffs failed to plead facts that could qualify for coverage under the policy's Civil Authority provision, which "unambiguously requires that an order of civil authority be issued in response to a dangerous physical condition created by damage to another property," *id.* at 18, and that the policy's virus exclusion applied, because the alleged losses were "directly or indirectly caused by or resulted from COVID-19, rather than strictly the [closure order]." *Id.* at 20.

On November 25, 2020, the U.S. District Court for the Northern District of Illinois granted Motorists Commercial Mutual Insurance Company's motion to dismiss a COVID-19 business interruption claim filed by the owner of several mattress stores in Indiana and Illinois. The court concluded that the policy's virus exclusion made clear that it applied to civil authority coverage and that it barred coverage for plaintiff's alleged losses resulting from COVID-19 closure orders. Order at 6-7. The court further rejected the plaintiff's contention that its losses were caused by the closure orders, not the virus, because its complaint alleged that the losses were caused by both the virus and the closure orders and because the virus is an underlying cause of loss that triggered the orders. *Id.* at 7-8.

New Business Interruption Class Actions:

A law firm, marketing company, and doctor's office filed a class action complaint against Hartford Casualty Insurance Group and The Hartford Financial Services Group, Inc. in federal court (E.D.N.C.) for declaratory relief and breach of contract. The "all risk" policy allegedly provides business income, civil authority, and virus coverage. Complaint ¶¶ 29–31, 48, 53. The policyholders allege Governor Roy Cooper's Stay at Home Executive Order and local government executive orders directing certain non-essential businesses to close to prevent the spread of COVID-19 caused the loss. *Id.* ¶¶ 18–20. The named plaintiffs seek to represent all persons and entities with business income, extra expense, and civil authority coverage, without a virus exclusion, who suspended their operations because of COVID-19 or civil authority orders and whose claims the insurer denied. *Id.* ¶ 62.

New Business Interruption Suits Against Insurers:

A cigar company sued Auto Owners Insurance Company in state court for breach of contract and vexatious refusal to pay for its losses incurred due to COVID-19 interrupting its business. The policy allegedly provides business income coverage. Complaint ¶ 5. The plaintiff alleges that the defendant has paid no benefits under the policy. *Id.* ¶¶ 11, 15.

A hotel sued Mt. Hawley Insurance Company, its brokers, and the brokers' errors and omissions carriers in state court for breach of contract, bad faith, and negligence. The commercial property policy allegedly provides business income, extra expense, civil authority, and ingress or egress coverage. Complaint ¶¶ 2, 10–11. The plaintiff allegedly suspended business operations due to COVID-19 and civil authority orders and municipal curfews that impaired ingress and egress from the hotel. *Id.* ¶¶ 11–14. Despite the coronavirus purportedly being present on and within one mile of the property, Mt. Hawley denied the claim. *Id.* ¶¶ 16–17, 19, 21. The plaintiff alternatively sued its brokers for their negligence and breach of contract related to their recommendations if there is no coverage under the policy. *Id.* ¶ 22.

The owner of a bar and grill with locations in the Dallas-Forth Worth area sued Members of the Owners First Property Association, seeking a declaration that its losses incurred in connection with state COVID-19 restriction orders and the interruption of its businesses are insured losses under its policy. The “all risk” policy allegedly provides business income, extra expense, civil authority, and ingress/egress coverage. Complaint at ¶¶ 57, 60-69. The policy does not contain a virus exclusion. *Id.* at ¶ 79. The complaint alleges that the defendant has failed to pay any benefits under the policy and “has in effect denied coverage” to plaintiff. *Id.* at ¶¶ 6, 81-83

The owner of a law firm in Washington state sued National Fire Insurance Company of Hartford in federal court (W.D. Wash.), asserting claims for declaratory relief, breach of contract, bad faith, violation of the Washington Consumer Protection Act, violation of the Washington Insurance Fair Conduct Act, and negligence. The “all risk” policy allegedly provides business income, extra expense, and civil authority coverage. Complaint at ¶9. The complaint alleges that the defendant wrongfully and in bad faith denied the plaintiff's claim for coverage without conducting a meaningful investigation. *Id.* at ¶¶54-69.

Zurich Sues Restaurant Group for Declaratory Relief

Zurich American Insurance Company sued a group of restaurants in federal court (D.D.C.) for declaratory relief. The policy allegedly provides business income, extra expense and civil authority coverage. Complaint at ¶¶ 45-51. The Complaint alleges that the defendants' alleged COVID-19 business interruption losses are not covered because the coronavirus “does not cause direct physical loss of or damage to property as required for coverage under the Zurich Policy and because the Zurich Policy excludes coverage for all losses caused by a ‘virus’ like the SARS-CoV-2 virus.” *Id.* at ¶ 2. The defendants previously filed suit against Zurich in the Circuit Court of St. Clair County, Illinois, which Zurich removed to federal court and for which it intends to file a motion to transfer to the U.S. District Court for the District of Columbia. *Id.* at ¶¶ 34-39.

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