

# CLIENT ALERT

## Insurers' COVID-19 Notepad: What You Need to Know Now (Week of June 1)

June 2, 2020

### Proposed Pandemic Risk Insurance Act (H.R. 7011)

On May 26, 2020, Carolyn Maloney, a member of the House Financial Services Committee, and several co-sponsors, introduced [H.R. 7011](#), the Pandemic Risk Insurance Act of 2020. The Act calls for the creation of the Pandemic Risk Reinsurance Program, which would be comprised of public and private compensation for business interruption losses resulting from future pandemics or public health emergencies. As with the Terrorism Risk Insurance Act, the federal government would serve as a backstop to maintain stability and share the burden with the insurance industry.

### Oregon Issues Emergency Orders Extending Premium Grace Period

The Oregon Department of Consumer and Business Services' Division of Financial Regulation issued an [emergency order](#) requiring *inter alia* all P&C insurers to (1) extend all deadlines for insureds to report claims or submit other communications related to claims; (2) give policyholders a single grace period of 60 days to pay any premiums that are subject to [the emergency order]; (3) with limited exceptions, suspend all involuntary cancellations and non-renewals for all active P&C insurance policies for nonpayment of premium, failure of the insured to provide information or documentation to the insurer, a claim directly resulting from the circumstances of the COVID-19 outbreak; and increased risk resulting from the COVID-19 outbreak.

### Illinois Proposes Business Interruption "Task Force"

The Illinois legislature proposed an amendment to [Senate Bill 2135](#) that would, among other things, require the Illinois Department of Insurance to appoint a task force on business interruption insurance policies. The Department would appoint no more than 10 members representing both the Department and the insurance industry, and the task force would 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.

### Insurer Seeks Dismissal of Restaurant's Business Interruption Suit

U.S. Specialty Insurance [moved to dismiss](#) the class action complaint filed in federal court (D. NV) brought by the Egg Works restaurant chain. The class action complaint was first reported in the [May 11th COVID-19 Notepad](#). U.S. Specialty argues that its policy "does not cover losses due to governmental directives resulting in the suspension of business operations because such losses do not directly and solely result from any covered 'insured event' as required for coverage under the policy to apply." The Insurer asserts Egg Works has failed to allege any fact indicating it has suffered loss as a direct result of a covered loss, such as Accidental Contamination, Malicious Tampering, Product Extortion, and Adverse Publicity, and therefore that the Complaint should be dismissed.

## COVID-19 Impacting Insurance Marketplace

According to [Fitch Ratings](#), “the credit quality of some U.K. non-life insurers could be affected by court rulings on the validity of business interruption,” and “Courts may rule in favour of claims in cases where policy wording is loose.” The statements come after Fitch downgraded several U.K. insurers following COVID-19 adjusted loss predictions.

In the wake of COVID-19, the Beazley’s CEO states that “prices are rising across the board after several years of price decreases,” and that the marketplace has not seen such an increase “since the early 2000s.” Although prices were rising before COVID-19 in response to increased losses from natural catastrophes and US jury awards, analysts and brokers anticipate the trend to continue post-COVID.

### U.K. and Europe:

The largest European risk management trade group, the Federation of European Risk Management (FERMA), seeks the European Union’s [support](#) to address the lack of business interruption insurance in the absence of property damage. In an open letter, FERMA urged the creation of “an EU resilience framework” for catastrophic risks, such as pandemic and massive cyberattacks, to address the shortage of non-physical damage business interruption (NDBI). “Without a framework for cross-border coverage, the EU insurance market remains fragmented, disrupting the functioning of the internal market especially when NDBI occurs as a result of events in another member state, outside the scope of existing national pools” FERMA said.

The Associate of British Insurers (ABI), in response to an open letter issued by the Covid Claims Group, has [stated](#) the government should offer a “significant” level of support by offering affordable pandemic coverage to businesses. The ABI’s response reiterates its position that “most Business Interruption policies do not provide any cover for human infectious disease,” and the limited number of add-on disease policies “typically specify a list of notifiable disease covered and/or relate to an outbreak,” but “are not designed to cover a global, viral pandemic.” The ABI asserts that the contention that insurers should pay claims “irrespective of policy wording” would be a breach of “their legal regulatory responsibilities” and “imperil the ability of insurers to pay the claims of other policyholders.”

### New Business Interruption Suits Against Insurers:

In-N-Out Burgers [sued](#) Zurich American Insurance Company in federal court (C.D. Cal.) for business interruption losses related to COVID-19 and related civil authority orders issued by several states and local governments. Plaintiff alleges “as a result of the COVID-19 pandemic, the property damage caused by the novel coronavirus, and in compliance with government guidance and orders, In-N-Out was forced to close all of its restaurant dining rooms...and has suffered significant losses from the closures.” Complaint at ¶ 41. The Complaint asserts the “all-risk” policy’s Civil or Military Authority, Contingent Time Element, Decontamination Costs, Ingress/Egress and Extra Expense provides coverage for such losses. *Id.* at ¶¶51-60.

Siren Salon, Inc. [sued](#) Liberty Mutual in federal court (N.D. Ill.) alleging the insurer wrongfully denied its claim for business interruption caused by Illinois COVID-19 government closure orders. The salon alleges the losses incurred due to the closure orders are covered under the policy’s Business Income, Extra Expense, and Civil Authority coverage parts, and that the policy’s virus exclusion “does not apply to the business losses incurred...by the COVID-19 Executive Orders.” Complaint at ¶28.

Harold's Chicken Shack #83 sued State Farm Fire and Casualty Co. in Illinois state court (Dupage County) seeking coverage for COVID-19 related business interruption losses. Plaintiff alleges it was forced to close because it was not able to comply with the "take-out" exception to the Illinois Governor's restriction on restaurant operations. Complaint at ¶¶9-10. Plaintiff alleges coverage for losses sustained due to the closure orders is provided under policy's "Loss of Income" provision, which provides coverage for loss sustained due to the necessary suspension of operations. *Id.* at ¶19. The complaint alleges that the policy's virus exclusion is not applicable because the sustained loss was "the result of the Governor's Closure Orders" and not the presence of COVID-19. *Id.* at ¶26.

An Arizona art gallery sued Liberty Mutual in federal court (D. Mass.) seeking coverage in connection with COVID-19 losses under an all-risk policy. Plaintiff alleges it was "unable to operate due to the stay-at home orders for public safety issued by the Governor of Arizona." Complaint at ¶29. According to the Complaint, Liberty's denial of the claim was improper because "the Civil Authority Coverage did not apply because Plaintiff did not suffer damage to its property...and because of the Virus Exclusion Clause." *Id.* at ¶¶14-15. Plaintiff alleges that any effort by Liberty "to deny the reality that the virus causes physical loss and damage would constitute false and potentially fraudulent misrepresentation." *Id.* at ¶39.

Treasure Island LLC sued Affiliated FM Insurance Company in federal court (D. Nev.) alleging the insurer wrongfully denied its claim for business interruption losses caused by authorities' actions in response to COVID-19 . Plaintiff alleges that the presence of COVID-19 and/or actions of civil authorities triggers coverage under the "all-risk" policy's Communicable Disease – Property Damage, Protection and Preservation of Property, Business Interruption, Extra Expense, Attraction Property, Civil Authority, Communicable Disease - Business Interruption, Ingres/Egress, and Supply Chain coverage provisions. Complaint at ¶¶49-66. The complaint alleges the insurer acted in bad faith by wrongfully denying its claim and failing to conduct a reasonable investigation and consider the relevant facts. *Id.* at ¶¶122-23.

The owner/operator of Baci Gelto sued Hartford in federal court (D. N.J.) for business interruption losses related to COVID-19 and related civil authority orders. According to the complaint, "Plaintiff and its employees, customers, and suppliers [were prohibited] from conducting any business or from accessing the premises and utilizing it for its intended purpose." Complaint at ¶¶46-49. Plaintiff alleges that the policy's virus exclusion does not apply, because Plaintiff's losses resulted from the action of civil authorities—not the presence of a virus. Complaint at ¶¶52-53.

A restaurant sued Nationwide Insurance in New York state court (Nassau County) seeking coverage for business losses sustained due to COVID-19 and related orders issued by the Governor of New York. Plaintiff seeks coverage under the business interruption policy's Civil Authority coverage provision, and alleges "the New York Governor's emergency order prohibiting on-premise operation or use of the restaurant" caused it to sustain loss under the policy. Complaint at ¶13. Plaintiff alleges the policy's virus exclusion is "deceptively written" and inapplicable to the claim. *Id.* at ¶16.

Ohio-based restaurant The Upper Deck sued Illinois Casualty Co. in Ohio state court (Summit County) seeking coverage for COVID-19 losses under the Business Income, Extra Expense, Civil Authority, and Spoilage provisions of the "all-risk" policy. The complaint alleges that Plaintiff sustained "loss(es) due to the civil authority orders issued by the Governor of Ohio and the Ohio Department of Health addressing COVID-19 and the Pandemic." Complaint at ¶25. According to the Complaint, Plaintiff sustained "loss(es) due to the issued created by COVID-19 at, in, on, and/or around Plaintiff's premises" (*id.* at ¶37), and the insurer "knowingly, purposely, and intentionally used inapplicable exclusions to deny claims." *Id.* at ¶34.

The owners/operators of several bars and restaurants sued Illinois Casualty Co. in Ohio state court (Stark County) seeking coverage for COVID-19 losses under the Business Income, Extra Expense, Civil Authority, and Spoilage provisions of the “all-risk” policy. The complaint asserts Plaintiffs sustained “loss(es) due to the civil authority orders issued by the Governor of Ohio and the Ohio Department of Health addressing COVID-19 and the Pandemic.” Complaint at ¶41. Plaintiffs allege they have “sustained direct physical loss or damage due to the presence of coronavirus,” on the insured property. *Id.* at ¶ 88. Plaintiffs allege Illinois Casualty Co. had “actual knowledge of the different meanings between pandemic, SARS, virus, bacteria, and contamination...and wrongfully and intentionally used the terms ‘virus’ and ‘bacteria,’ among others, to exclude Plaintiffs’ claims.” *Id.* at ¶99.

Murphy’s Pub sued Cincinnati Insurance Company in Ohio state court (Hamilton County) seeking coverage for business losses sustained “as a result of a ‘shutdown order’ from the Ohio Department of Health, based upon the airborne and deposited presence of the COVID-19 virus through[out] the State of Ohio.” Complaint at ¶4.

Carpe Diem Coffee Shop sued The Cincinnati Insurance Company in Ohio state court (Stark County) for denying its claim under an all-risk policy for losses allegedly sustained due to the physical presence or contamination of COVID-19 and the Business Suspension Orders issued by the Government of Ohio and the Ohio Department of Health addressing the pandemic. The complaint alleges Cincinnati wrongfully denied Plaintiff’s claim due to the virus although the policy did not include “viruses, disease, pandemic and SARS” exclusions. Complaint at ¶90.

Restaurants and bars Johnny J’s Pub & Grille, Shots, and Town Tavern sued The Cincinnati Insurance Company in Ohio state court (Summit County) seeking coverage for alleged “loss(es) due to the civil authority orders issued [by] local and state governments addressing COVID-19 and the pandemic.” According to Plaintiffs, they have sustained “loss(es) due to the issues created by the physical spread and/or contamination of COVID-19 at, in, on, and/or around Plaintiffs’ premises.” Complaint at ¶ 37. Plaintiffs allege Illinois Casualty had “actual knowledge of the different meanings between pandemic, SARS, virus, bacteria, and contamination...and wrongfully and intentionally used the terms ‘virus’ and ‘bacteria,’ among others, to exclude Plaintiffs’ claims.” *Id.* at ¶102.

Gervasi Vineyard sued National Trust Insurance Company (NTIC) in Ohio state court (Stark County) alleging it “sustained loss(es) due to the presence of COVID-19 at, in, on and/or around” the insured premises (Complaint at ¶38), and as a result of the “civil authority orders issued by the Governor of Ohio and the Ohio Department of Health” (*id.* at ¶40). Plaintiff alleges that had “NTIC intended to exclude claims for the COVID-19 Pandemic” they would have included express exclusionary language used in the past. *Id.* at ¶95.

Lakeside Pub sued Illinois Casualty Co. in Ohio state court (Summit County) seeking coverage for COVID-19 losses under the Business Interruption, Extra Expense, Civil Authority, and Spoilage provisions of the “all-risk” policy. The Complaint alleges that “based on the prevalence of the virus in Summit County, it is probable that Plaintiff sustained direct physical loss of or damage due to the presence of coronavirus,” and that it has sustained direct physical loss as the result of the civil authority orders issued by the Governor of Ohio. Complaint at ¶82. Plaintiff alleges Illinois Casualty Co. had “actual knowledge of the different meanings between pandemic, SARS, virus, bacteria, and contamination...and wrongfully and intentionally used the terms ‘virus’ and ‘bacteria,’ among others, to exclude Plaintiff’s claims.” *Id.* at ¶93.

McKinley Development Leasing Company sued Westfield Insurance Company in Ohio state court (Stark County), alleging that it sustained covered losses under the “all-risk” policy due to the presence of COVID-19 and orders issued by the Governor of Ohio

and the Ohio Department of Health requiring the suspension of Plaintiff's operations and prohibiting access to Plaintiff's properties. McKinley alleges Westfield wrongfully denied its claim based "on exclusions that are not applicable to the pandemic." Complaint at ¶178.

Nick Sylvester's North End Italian Grille sued State Automobile Mutual Insurance Company in Ohio state court (Stark County) seeking coverage for COVID-19 losses under the "all-risk" policy's Business Income, Extended Business Income, Extra Expense Civil Authority, Business Income – Limited Extension for Food-Borne Illness, and Food Spoilage provisions. The Complaint asserts "based on the prevalence of the virus in Stark County, "Sylvester's has sustained direct physical loss of or damage due to the presence of coronavirus, and has...sustained direct physical loss as the result of the Pandemic and/or civil authority orders issued by the Governor of Ohio." Complaint at ¶170. Plaintiff alleges State Auto had "actual knowledge of the different meanings between pandemic, SARS, virus, bacteria, and contamination...and wrongfully and intentionally used the term 'pollution,' among others, to exclude Sylvester's claims." *Id.* at ¶181.

Los Gallos Mexican Restaurant sued Erie Insurance Group in Ohio state court (Mahoning County) seeking coverage for COVID-19 related losses under the issued policy. Plaintiff alleges the "Business Interruption Insurance or Business Catastrophe Liability policy" provides coverage for "Revenue loss resulting from business interruption and loss from an inability to operate." Complaint at ¶¶1, 4. The Complaint asserts Plaintiff was required to close down as "a result of COVID-19 and the Ohio Government's shutdown order." *Id.* at ¶15.

Hampton Inn Midwest City filed a declaratory action against Columbia Insurance Company in Oklahoma state court (Oklahoma County) seeking coverage for business losses sustained as a result of closure orders issued by local and state governments. Complaint at ¶¶13-16. The Complaint alleges that the Columbia policy provides extended Business Income, Extra Expense, and Civil Authority coverage for business income losses, and that the virus exclusion was added to the policy without any additional consideration and is therefore invalid. *Id.* at ¶12.

Home2 Suites filed a declaratory action against Arch Specialty Insurance Company in Oklahoma state court (Oklahoma County). The Complaint seeks coverage for business losses sustained as a "direct result of this pandemic disaster and closure orders." Complaint at ¶18. Plaintiff alleges it has experienced a slowdown of its business activities and has suffered covered losses under the policy. *Id.*

Hampton Inn & Suites - OKC filed a declaratory action against Mt. Hawley Insurance Company in Oklahoma state court (Oklahoma County) seeking coverage for business losses sustained as a result of closure orders issued by local and state governments. Complaint at ¶¶12-15. The Complaint alleges that the policy's Business Income, Extended Business Income, Extra Expense, and Civil Authority provisions provide coverage losses sustained as a result of COVID-19 and closure orders. *Id.* at ¶17.

A casino owner sued Affiliated FM Insurance Company in federal court (D. Colo.) alleging that the insurer wrongfully denied its claim for business interruption losses due to Colorado and Nevada's COVID-19 closure orders. The complaint alleges that the policy "specifically includes property damage coverage for 'communicable disease,'" and provides that "the actual presence of a 'communicable disease' at a described location, coupled with access to the location being limited, restricted, or prohibited by an order of a government agency, constitutes 'property damage.'" The complaint further alleges that while the policy does not define what constitutes the "actual presence" of a communicable disease, it does not require testing of employees, patrons, or surfaces at the insured location to establish the actual presence of a communicable disease.

A hotel owner sued Fireman’s Fund 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 owner alleges the claim made under the all-risk policy it purchased was denied “without inspection.”

The owner of a medical spa sued Certain Underwriters at Lloyd’s, London in Florida state court (Miami-Dade Cty.) alleging the insurer wrongfully denied its claims for business interruption losses due to Florida’s COVID-19 closure orders. The complaint alleges that policy does not include the 2006 ISO virus exclusion endorsement or any other exclusion “which would apply to allow Defendant to deny coverage for losses caused by COVID-19.” The owner contends that because the policy is an all-risk policy and “does not specifically exclude the losses that Plaintiffs have suffered, those losses are covered.”

A Florida business sued Sentinel Insurance Company in Florida state court (Orange Cty.) alleging that the insurer wrongfully denied its claim for business interruption losses due to Florida’s COVID-19 closure orders. The complaint alleges that “[p]olicy coverages include . . . Fungi, Bacteria, or Virus,” and that its loss of use of the insured property is a “direct physical loss” that is covered under the policy.

An outdoor lifestyle retailer sued The Cincinnati Casualty Company in federal court (M.D. Ala.) alleging the insurer wrongfully denied its claim for business interruption losses due to Alabama’s COVID-19 closure orders. The retailer contends that the policy does not “exclude or limit coverage for losses from the potential spread of viruses or communicable diseases,” that the “presence of virus or disease can constitute physical damage to property, as the insurance industry has recognized,” and that “[a]ny effort . . . to deny the reality that the virus causes physical loss and damage would constitute a false and potentially fraudulent misrepresentation that could endanger the Plaintiff and the public.”

The owner of health and fitness centers sued The Cincinnati Insurance Company in federal court (E.D. Pa.), asserting claims for breach of contract and bad faith. The “all risk” policy allegedly provides business income, extra expense, and civil authority coverage, and does not contain a virus exclusion. Complaint at ¶¶18.-19. The Complaint alleges that, while COVID-19 was not present on the plaintiffs’ properties, plaintiffs experienced covered losses due to state-mandated closure orders. *Id.* at ¶24. The Complaint further alleges that the insurer denied coverage, and in doing so “attempted to utilize the Pollution and Contamination exclusions ... knowing full well such exclusions do not apply...” *Id.* at ¶27.

The owner of hearing aid stores in Pennsylvania, Virginia, Delaware, North Carolina and Maryland sued Hartford Underwriters Insurance Company, The Hartford Financial Services Group, Inc., Twin Cities Fire Insurance Company, Continental Casualty Company, and CNA Financial Corporation in federal court (E.D. Pa.), alleging that the “all risk” policies allegedly provide business income, extra expense, and civil authority coverage. Complaint at ¶¶7, 13. According to the Complaint, while COVID-19 was not present on the plaintiffs’ properties, plaintiffs experienced covered losses due to state-mandated closure orders. *Id.* at ¶22.

The owner of a dental group practice in Philadelphia sued The Hartford Financial Services Group, Inc. in federal court (E.D. Pa.), alleging that the plaintiff’s insured location remains closed indefinitely, causing the plaintiff to sustain lost business and expenses, and that Hartford denied its claim for coverage. *Id.* at ¶¶28, 37-38.

The owner of several restaurants in Dallas sued The Cincinnati Insurance Company, alleging that Cincinnati “anticipatorily repudiated” the plaintiff’s insurance coverage when it responded to its claim for coverage for COVID-19 losses with a reservation of rights which “clearly indicated [its] position of no coverage,” though coverage has not been formerly denied. Complaint at ¶¶33-34. (The case was originally filed in Texas state court (Dallas Cty.) but has been removed to federal court (N.D. Tex.))

The owner of a dental practice in Washington state sued Hartford Casualty Insurance Company in federal court (W.D. Washington), alleging that because of COVID-19 and state-mandated closures, the plaintiff were not able to provide dental services and are now only able to resume their practice in a limited capacity, resulting in loss of income. *Id.* at ¶13.

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

A custom framing store filed a class action complaint against Farmers, Truck, and Mid-Century Insurance Company in California state court (Los Angeles Cty.) alleging that Farmers 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 does not apply because the "efficient proximate cause of the business income losses . . . are the precautionary measures taken by California's state and local officials to prevent the spread of COVID-19 – not the presence of coronavirus on the property of Plaintiff or the members of the class." The store seeks to represent a class of all California retail/services businesses with a Farmers' Businessowners Policy who made a claim with Farmers for lost business income and were denied coverage.

A Port Huron restaurant sued Conifer Holdings, Inc. in federal court (E.D. Mich.) on behalf of itself and all others similarly situated, alleging that due to "statewide restrictions on movement and operations of non-essential businesses, Plaintiff suffered significant loss of business income." Complaint at ¶31. Plaintiff asserts it "[w]as forced to suspend business operations at the restaurant" due to the government ordered restrictions. *Id.* at ¶31. Plaintiff further alleges that Conifer Holdings wrongfully denied its claim by asserting "Plaintiff's losses were not direct physical loss of or damage to its business," and that the virus exclusion "was applicable to the global COVID-19 pandemic" and associated civil authority orders. *Id.* at ¶15.

The owner/operator of Topsy's Popcorn and Ice Cream shops in Missouri and Kansas filed a class action complaint against Continental Western Group and Union Insurance Company in federal court (D. Kan.) seeking coverage for COVID-19 related business interruption losses. The class complaint alleges Plaintiff and members of the putative class were prohibited access to their premises by the civil authority orders issued to reduce the spread of coronavirus.

The law firm Karmel Davis & Assoc. filed a class action complaint against Hartford in federal court (N.D. Ga.) seeking class wide damages and declaratory relief in connection with business losses sustained due to COVID-19 and arising from shelter-in-place orders. Plaintiff alleges as a result of mandates issued by Georgia, and orders issued by several Georgia based courts, it suspended its practice According to the Complaint, "Harford has denied claims related to COVID-19 on a uniform and class wide basis, without individual bases or investigations." Complaint at ¶ 117.

A Georgia dental practice filed a class action complaint against The Cincinnati Insurance Company in federal court (N.D. Ga.) for denying claims for losses sustained due to Georgia's COVID-19 closure orders. Plaintiff alleges the closure orders "mandated dental practices to cancel or postpone treatment of all non-emergent patients." Complaint at ¶39. The Complaint alleges that the pandemic "renders the Covered Property...otherwise unfit for its intended use, which constitutes direct physical loss" under the policy. *Id.* at ¶47. Plaintiff asserts Cincinnati wrongfully denied claims based on the lack of "direct physical loss or damage to or near Covered Property" and the incorrect application of a pollution exclusion. *Id.* at ¶58.

Striker Lanes sued Fireman's Fund Insurance in federal court (N.D. Ill.) on behalf of itself and others similarly situated for wrongfully denying claims for Business Income, Extra Expense, and Civil Authority coverage resulting from losses sustained due to the pandemic. The Complaint alleges that the standard policy forms at issue provide Business Income, Extra Expense, and Civil Authority coverage, and that the insurer "uniformly refuses to pay for losses covered by BI, EE, and/or Civil Authority provisions

arising from SARS-CoV-2, COVID-19 and/or the COVID-19 Pandemic. Complaint ¶¶77. Plaintiff alleges that as a result of the pandemic and Illinois closure orders, it was required “cease and/or significantly reduce operations” and has been prohibited access to the insured premises. *Id.* at ¶157.

A California restaurant owner filed a class action [lawsuit](#) against Liberty Mutual Insurance Company, American Fire and Casualty Company, and Ohio Security Insurance Company in federal court (S.D. Cal.) alleging the insurers wrongfully denied its claims for business interruption losses due to California’s COVID-19 closure orders. The complaint alleges that the policies’ “purported virus exclusion is inapplicable to Plaintiffs’ claims” because the insurers “never intended the . . . virus exclusion to apply in circumstances similar to the COVID-19 pandemic,” and that the exclusion is “void against public policy.”

A restaurant owner filed a class action [lawsuit](#) against Erie Insurance in federal court (D.D.C.) alleging the insurer wrongfully denied its claim for business interruption losses due to the District of Columbia’s COVID-19 closure orders. The complaint alleges that the policy does not have a virus exclusion, and that Erie has “on a widescale and uniform basis, refused to pay its insureds under its Business Interruption, Income Protection, Extra Expense, and Civil Authority coverages for losses suffered due to COVID-19 and/or actions of civil authority(ies)”

A Florida dental practice filed a class action [lawsuit](#) against The Hartford Financial Services Group and Sentinel Insurance Company in federal court (S.D. Fla.), alleging that Sentinel, a wholly-owned subsidiary of Hartford, wrongfully denied its claim for business interruption losses due to Florida’s COVID-19 closure orders. The complaint alleges that the policy “expressly provides ‘Limited Fungi, Bacteria, or Virus Coverage,” and that “[a]ccordingly, because the Policy is an all-risk policy, does not exclude the losses that Plaintiff has suffered, and expressly and affirmatively provides limited coverage for loss or damage by virus, Plaintiff’s losses are covered.”

The owners of Planet Fitness franchises filed a class action [lawsuit](#) against Atlantic Specialty Insurance Company in Florida state court (Palm Beach Cty.) alleging that in response to their claims for business interruption losses arising from Florida’s COVID-19 closure orders, the insurer simply reserved rights and has yet to provide a coverage determination. The complaint alleges that Atlantic “has failed to pay for similar business interruption losses and expenses by thousands of other insureds holding policies that are, in all material respects, identical” to the policy at issue. The owners contend that the policy at issue does not contain a virus exclusion endorsement, and that because “the Policy is an all-risk policy and does not specifically exclude the losses that Plaintiffs have suffered, those losses are covered.”

The owner of a tanning salon in Pennsylvania [sued](#) Atain Specialty Insurance Company on behalf of itself and all others similarly situated in federal court (E.D. Pa.), seeking a declaration that their businesses losses allegedly incurred as a result of COVID-19 and state closure orders are covered losses under their policies. Complaint at ¶¶4, 48. The “all risk” policy allegedly provides business income, extra expense, civil authority, and contamination coverage. *Id.* at ¶11. The Complaint alleges that the insurer rejected the plaintiff’s claim for business interruption coverage, partially due to a Virus Exclusion clause in the policy. *Id.* at ¶¶9-12. The class is defined as all insureds of the insurer “who have suffered business interruption and lost income as a result of Civil Authority Orders issued in response to the COVID-19 pandemic.” *Id.* at ¶34.

The owner of a barbershop in Texas [sued](#) The Hartford Financial Services Group and Twin City Fire Insurance Company on behalf of itself and all others similarly situated in federal court (W.D. Texas), , alleging that the “all risk” policy at issue allegedly provides business income, extra expense, and civil authority coverage. Complaint at ¶¶2-4. The policy allegedly includes “Time Element Coverage,” which limits payment to the amount of loss and expense sustained in a period of not more than 30 days

when business operations are suspended because of “loss or damage to property caused by fungi, wet or dry rot, bacteria or virus.” *Id.* at ¶18. The Complaint alleges that the insurer unjustifiably denied its claim for coverage, and has “systematically refused to pay all their insureds under their Business Income and Civil Authority coverages for losses suffered due to COVID-19,” regardless of whether parties contain virus endorsements. *Id.* at ¶¶6, 33-47.

The owner of a spa in Virginia Beach sued State Farm on behalf of itself and all others similarly situated in federal court (E.D. Va.), alleging that the “all risk” policy allegedly provides loss of income, extra expense, and civil authority coverage. Complaint at ¶¶33-35. The Complaint alleges that the plaintiff’s losses were not caused by the presence or outbreak of COVID-19, but rather by the state social distancing guidance and closure orders, which have forced it to suspend its operations. *Id.* at ¶41. The Complaint further alleges that the insurer wrongfully denied coverage, and has similarly denied coverage nationwide. *Id.* at ¶¶44-46.

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

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