

## CLIENT ALERT

### Insurers' COVID-19 Notepad: What You Need to Know Now, Week of August 9, 2021

August 9, 2021

#### Courts Dismiss COVID-19 Business Interruption Claims

On August 4, 2021, the circuit court for Cook County, Illinois granted State Farm & Casualty Co.'s motion to dismiss a dental practice group's putative COVID-19 class action complaint. The court found that the plaintiff's claim was "the exact type anticipated by the [policy's virus] exclusion." Order at 9-10. According to the court, even if the exclusion did not apply, the plaintiff could not allege covered physical loss or damage because "the COVID-19 virus was not incorporated into the property" and could be cleaned and disinfected from surfaces. *Id.* at 11-12.

On August 4, 2021, the Supreme Court of the State of New York (New York County) granted Westport Insurance Corp.'s motion to dismiss a COVID-19 business interruption lawsuit filed by the owner of several restaurants. The court found the plaintiff did not plead losses covered by the policy. Order at 1.

On August 3, 2021, the district court for the Eastern District of Louisiana granted U.S. Specialty Insurance Co.'s motion for summary judgment and dismissed a restaurant owner and operator's COVID-19 business interruption claim. The district court rejected the plaintiff's claim that "an infected employee entering a restaurant" constituted accidental contamination under its policy because—contrary to plaintiffs' arguments—plaintiffs' restaurants, "the 'service' provided by [its] restaurants," and "non-ingestible items such as plates, tablecloths, and saltshakers" did not constitute "ingestible products" or "ingredients or components" of "ingestible products for human consumption" covered by the policy. Order at 7-9. Additionally, the court found that the plaintiff failed to present any evidence of accidental contamination because there was no "objectively verifiable evidence" that any customer contracted COVID-19 from plaintiff's food. *Id.* at 9-11. Finally, the district court rejected the plaintiff's bad faith claim because the plaintiff failed to prove any losses were covered under its policy. *Id.* at 12.

#### New Business Interruption Suits Against Insurers:

Five dental practices sued The Dentists Insurance Company in California state court (Los Angeles County) for breach of contract, breach of the covenant of good faith and fair dealing, bad faith, unfair business practices, unjust enrichment, declaratory judgment, injunctive relief, negligence, and negligent misrepresentation. The plaintiffs' commercial liability and property insurance policies provide, among other things, business income, extra expense, dependent property, and civil authority coverage. Complaint at ¶ 40. The Complaint alleges plaintiffs' suffered direct physical losses due to state civil authority orders, "as well as the presence of COVID-19." *Id.* at ¶ 43. Plaintiffs also claim that Dentists Insurance unreasonably denied plaintiffs' claims in bad faith and that 50 unnamed insurance brokers misrepresented the scope of their policies. *Id.* at ¶¶ 48-51.

### **Insurers File Declaratory Actions:**

Federal Insurance Company [RS1] sued Yelp, Inc. for a declaration that Yelp’s losses were not covered under its policy and excluded by the policy’s acts or decisions exclusion. The Complaint alleges that Yelp has not established any direct physical loss or damage to covered property due to COVID-19 , and that the policy’s acts or decisions exclusion—which excludes losses “caused by or resulting from acts or decisions, including the failure to act or decide, of any person, group, organization, or governmental body” —bars coverage for Yelp’s claims. *Id.* at ¶¶ 23, 61-63.

Catlin Syndicate Limited sued the operator of spa and beauty businesses in federal court (C.D. Cal.) for declaratory relief. The policy allegedly provides business interruption and extra expense coverage. Complaint at ¶ 20. The Complaint alleges that the insured’s claim for lost business income as a result of restrictions placed on its business operations does not constitute insured damage, *id.* at ¶¶ 41-42, as loss of possession and/or loss of use, without physical damage, does not trigger coverage under the policy. *Id.* at ¶ 59.

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**

Associate – Washington, D.C.  
Phone: +1 202.688.3508  
Email: [asinger@crowell.com](mailto:asinger@crowell.com)

#### **Rachel A. Jankowski**

Associate – Washington, D.C.  
Phone: +1 202.624.2647  
Email: [rjankowski@crowell.com](mailto:rjankowski@crowell.com)

#### **Samuel H. Ruddy**

Associate – Washington, D.C.  
Phone: +1 202.624.2564  
Email: [sruddy@crowell.com](mailto:sruddy@crowell.com)