

CLIENT ALERT

Insurers' COVID-19 Notepad: What You Need to Know Now (Week of December 28)

December 28, 2020

Federal Courts Dismiss COVID-19 Business Interruption Claims

On December 23, 2020, the federal district court for the Middle District of Tennessee granted Admiral Indemnity Company's motion to dismiss a restaurant's COVID-19 business interruption complaint. First, the court held that all claims for coverage were precluded by the policy's virus exclusion. Order at 8-12. Second, the court held that even if the exclusion did not apply, the claim would not be covered because the plaintiff did not allege that the suspension of its business operations were caused by "direct physical loss of or damage to property." *Id.* at 12-17. Lastly, the court rejected the plaintiff's argument that its claim was covered by the policy's civil authority clause, because (1) the virus did not cause actual physical damage to the covered property, (2) the closure orders were issued to control the spread of the virus, not because of "dangerous physical conditions" at a neighboring property, and (3) the closure orders did not prohibit physical access to the plaintiff's restaurant or the area around it. *Id.* at 18.

On December 21, 2020, the federal district court for the District of Connecticut granted AmGUARD Insurance Company's motion to dismiss a restaurant's COVID-19 business interruption class action complaint. The court found that the policy's virus exclusion barred coverage for the claim, concluding that the exclusion applied as long as a virus "acts as a link somewhere in the causal chain producing the loss or damage at issue," which was satisfied even though the complaint alleged that the immediate cause of loss was the COVID-19 closure order. Order at 9-10.

New Business Interruption Class Actions:

A New Jersey podiatry institute filed a class action complaint against the Hartford Financial Services Group, Inc. and Hartford Insurance Company of the Midwest for declaratory judgment, breach of contract, and bad faith breach of contract and the duty of good faith and fair dealing. The "all risk" policy allegedly included business income, extra expense, civil authority, extended business income, and business income from dependent properties coverage. Complaint ¶¶ 28, 32. The plaintiff alleges the civil authority orders in New Jersey forced it to cease or suspend its operations, yet The Hartford denied its claims. *Id.* ¶¶ 14, 58. The plaintiff seeks to represent three state-wide classes for those that: 1) "suffered a suspension of business operations due to government prohibitions on the use of their insured premises"; 2) "incurred extra expenses to avoid or minimize the suspension of business operations due to government prohibitions on the use of their insured premises"; and 3) "suffered an actual loss of Business Income and/or Extra Expense due to government prohibitions on the use of their insured premises." *Id.* ¶ 74.

New Business Interruption Suits Against Insurers:

The owners of minor league baseball teams sued Philadelphia Indemnity Insurance Company in Pennsylvania state court (Philadelphia County) to recover losses stemming from the cancellation of the Minor League Baseball 2020 season. The "all risk" policy allegedly provides business income, extra expense, civil authority, and rental value coverage (Complaint at ¶¶ 51-63), and contains an exclusion for "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.” *Id.* at ¶ 64. The complaint alleges that the defendant wrongfully denied the plaintiffs’ claims for coverage. *Id.* at ¶¶66-70.

The owners of commercial and residential property in Pennsylvania, New York, Connecticut, Arkansas, Washington, D.C., and Massachusetts sued Travelers Excess and Surplus Lines Company in federal court (E.D. Pa.), asserting claims for breach of contract, breach of the covenant of good faith and fair dealing, and statutory bad faith. The “all risk” policy allegedly provides business income, extra expense, rental value, ingress and egress, dependent property, and civil authority coverage. Complaint ¶¶ 26-34. The policy also contains a “virus exclusion.” *Id.* at ¶ 113. The complaint alleges that the defendant wrongfully and in bad faith denied the plaintiffs’ claim for coverage, and “has employed calculated claims-handling strategies designed to deny . . . recovery.” *Id.* at ¶¶ 99-104.

The owner of a dine-in restaurant in Tacoma sued Truck Insurance Exchange in Washington state court (Pierce County), asserting claims for declaratory relief, breach of contract, insurance bad faith, violation of the Consumer Protection Act, and negligence. The “all risk” policy allegedly provides business income, extra expense, and civil authority coverage. Complaint at ¶¶ 10-18. The complaint alleges that the defendant wrongfully denied the plaintiff’s claim for coverage without conducting a meaningful investigation. *Id.* ¶¶ 53-57.

A restaurant sued AXIS Insurance Company in New Jersey state court (Essex County), asserting breach of contract, bad faith, and violations of the New Jersey Consumer Fraud Act and Unfair Claims Settlement Practices Act. The “all risk” policy allegedly provides business income, extra expense, civil authority, and supplemental business coverage. Complaint ¶ 3. The plaintiff alleges that the defendant wrongfully denied its claim for “loss of use.” *Id.* ¶¶ 6, 8.

A New Mexico eye practice sued the Cincinnati Insurance Company in New Mexico state court (Bernalillo County) for breach of contract, breach of duty of good faith and fair dealing, statutory violations, and declaratory judgment. An “all risk” policy with no virus exclusion, the policy allegedly provides coverage for business income, extra expense, civil authority, and dependent property business interruption. Complaint ¶¶ 4, 33. The plaintiff claims Cincinnati denied its claim without reviewing, investigating, or analyzing it. *Id.* ¶¶ 6, 109.

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