

CLIENT ALERT

Insurers' COVID-19 Notepad: What You Need to Know Now (Week of July 6)

Jul.08.2020

Michigan Court Dismisses Business Interruption Claim

In what appears to be the first ruling on the merits of a COVID-19 business interruption claim, a judge in the Circuit Court in Ingham County Michigan ruled from the bench, dismissing the COVID-19 business interruption claims of two restaurants, *Gavrilides Mgmt. Co., et al. v. Michigan Insurance Co.*, Case No. 20-258-CB-C30. The restaurants sought to recover business income and extra expenses under the policy's Civil Authority coverage based on the Governor of Michigan's closure order restricting the restaurants' business to carry-out and limiting access to the properties. The court issued its decision from the bench following argument on the insurer's motion for summary disposition. The court concluded that it was clear that the policy covered only direct physical loss of or damage to property, which has to be something that alters the physical integrity of the property, and found there was none. The court further concluded that the policy's virus exclusion would apply, even if there had been viable allegations of direct physical loss of or damage to property. The bench ruling can be seen via [this link](#), and a written order is expected to be issued soon.

Insurer Moves for Certify Direct Physical Loss Issue to Ohio Supreme Court

In a class action suit against the Cincinnati Insurance Company in federal court (S.D. Ohio), the insurer moved to certify to the Supreme Court of Ohio the question of whether the general presence of a virus constitutes direct physical loss to property. The insurer contends that all relevant coverages for which the plaintiffs seek coverage require direct physical loss to property, that the direct physical loss issue is outcome determinative in the case, that the issue needs to be decided under Ohio law for the benefit of Ohio citizens, and that certification is appropriate because the Supreme Court of Ohio has not ruled on the issue.

CA Legislature Proposes Business Interruption Rebuttable Presumption

California legislators proposed amending [AB 1552](#), modifying the burden of proof for COVID-19 business interruption claims filed during the state of emergency declared by California Governor Gavin Newsom. If passed, "the bill would create certain rebuttable presumptions that COVID-19 was present on specified property and caused physical damage to that property which was the direct cause of the business interruption." For claims made under a civil authority coverage provision, the bill would apply a rebuttable presumption "that COVID-19 was present on the property located within the geographical location covered by the order of civil authority and caused physical damage to that property which was the direct cause of the insured's business interruption." The bill states that it "does not affect the applicability of any policy provision" including virus exclusions, but states that "COVID-19 shall not be construed as a pollutant or contaminant for purposes of any exclusion" unless viruses are "expressly included in that exclusion policy language." The bill has been referred to the Senate Rules Committee, which will likely assign it to the Senate Insurance Committee for review.

Kentucky District Court Remands Business Interruption Suit to State Court

A Kentucky federal court granted ABC Daycare & Learning Center's (ABC) motion to remand its business interruption lawsuit against West Bend Mutual Insurance Company to Madison Circuit Court, Wisconsin. ABC filed an amended complaint adding Eric Friedlander, Acting Secretary for Kentucky's Cabinet for Health and Family Services, as a defendant because "the legal effect and legal interpretation of Friedlander's Day Care Closure Order is sought in this action." ABC alleged that Mr. Friedlander's addition as a defendant destroyed complete diversity and made the case unremovable to federal court, while West Bend asserted that he was simply a "nominal party whose presence could be disregarded for purposes of determining diversity jurisdiction." The court found that Mr. Friedlander was a real party to the controversy because "the insurance policy language . . . indicates that plaintiff likely cannot maintain a successful communicable disease-related business interruption claim . . . unless a valid government order caused ABC to close," and that as such, "ABC's lawsuit . . . necessarily involves the validity and effect of Friedlander's order."

UK: FCA Serves Reply in Business Interruption Test Case

As reported in Crowell & Moring's June 8 and June 29 Notepads, the Financial Conduct Authority's COVID-19 related insurance test case is proceeding in the UK. The FCA has filed its witness statement, the insurers filed their defenses, and on July 3, 2020, the FCA filed its reply. The reply states that the defenses, "are, in general terms, rejected. They depend upon adopting unduly restrictive meanings of particular words (such as 'prevention' and 'occurrence')," thereby "depriving the cover clause of much of its apparent and intended scope, none of which reflect what the reasonable person in the position of the parties would understand." On July 20-23 and 27-30, an 8-day court hearing in the case will be held.

New Business Interruption Suits Against Insurers:

The owner and operator of a Florida hotel and restaurant sued Starr Surplus Lines Insurance Company in federal court (S.D. Fla.), asserting claims for declaratory relief and breach of contract. The "all risk" policy allegedly provides business income, extra expense, and civil authority coverage. Complaint at ¶¶ 5, 6. The policy does not contain a virus exclusion. *Id.* at ¶27. The Complaint alleges that the presence of COVID-19 "caused direct physical loss of and/or damage to the covered premises under the Policy by, among other things, damaging the property, denying access to the property, preventing customers from physically occupying the property, causing the property to be physically uninhabitable by customers, causing its functions to be nearly eliminated or destroyed, and/or causing a suspension of business operations on the premises." *Id.* at ¶ 33.

A sporting goods store owner sued Cincinnati Specialty Underwriters Insurance Company in Ohio state court (Hamilton County), asserting claims for declaratory relief, breach of contract, and bad faith. The "all risk" policy allegedly provides business income and civil authority coverage. Complaint at ¶¶ 17, 21. The insurer allegedly denied coverage on the basis that there was no "direct physical loss of or damage" to the plaintiff's property or surrounding properties and that coverage was precluded by the policy's virus exclusion and "ordinance or law" exclusion. *Id.* at ¶ 5. Plaintiff allegedly suffered "both 'physical loss of' and 'damage to' its insured premises" under "commonly accepted English usage" of the terms "loss" and "damage." *Id.* at ¶ 26, 27. The Complaint further alleges that the loss was caused by order of civil authority and that the plaintiff is "unaware of any loss or damage caused by or resulting from a virus, bacterium or other microorganism, and is unaware of the presence of any of these substances in its store or the surrounding businesses." *Id.* at ¶ 33.

The owner of restaurants in nine states and the District of Columbia sued General Casualty Company of Wisconsin in federal court (E.D. Pa.), seeking a declaration that its insurance policy provides coverage for any current and future loss of business income as a result of state civil authority orders affecting the operation of their businesses due to physical loss or damage caused by the COVID-19 pandemic. The “all risk” policies allegedly provides business income, extra expense, and civil authority coverage. Complaint at ¶¶ 16-19. The policy contains a virus and bacterium exclusion. *Id.* at ¶37. The Complaint specifically alleges that individuals have contracted COVID-19 in Montgomery County and/or in and around the location of some of its covered properties. *Id.* at ¶67.

The owner of restaurants in Pennsylvania sued Cincinnati Insurance Company and its broker in Pennsylvania state court (Philadelphia County), asserting claims for breach of contract, breach of the duty of good faith and fair dealing, statutory bad faith, and negligent breach of contract. The policies allegedly provide business income, extended business income, extra expense, and civil authority coverage, and do not contain a virus exclusion. Complaint at ¶¶21-23. The Complaint alleges that the insurer wrongfully denied the plaintiff’s claim for coverage without conducting any investigation. *Id.* at ¶¶32-40.

The owner of a dental practice in Pennsylvania sued Allstate Insurance Company in federal court (E.D. Pa.), asserting claims for declaratory relief and breach of contract. The “all risk” policy allegedly provided business income, extra expense, and civil authority coverage. Complaint at ¶¶23-42. The policy also contained an exclusion for “loss or damage caused by or resulting from any virus, bacterium or other microorganism.” Complaint at ¶64. The insurer allegedly wrongfully denied the plaintiff’s claim for coverage, and “has denied, or will deny all claims for coverage under their “all-risk” property damage policies...” *Id.* at ¶¶86, 99-100.

A wholesale supplier sued The Cincinnati Insurance Company in federal court (N.D. Ohio), asserting claims for declaratory relief, breach of contract, and bad faith. The “all risk” policy allegedly provides business income, extra expense, and civil authority coverage. Complaint at ¶ 30. The policy does not contain a virus exclusion. *Id.* at ¶ 16. The insurer allegedly denied coverage on the basis that coronavirus “does not constitute ‘direct physical damage.’” *Id.* at ¶ 14. Plaintiff claims to have “sustained direct physical loss and damage to items of property located at its premises and direct physical loss and damage to its premises described in the Policy as a result of the Closure Orders, and the presence of COVID-19 particles and/or the pandemic.” *Id.* at ¶ 73.

A restaurant owner in Pennsylvania sued Hospitality Insurance Company in federal court (W.D. Pa.), seeking a declaration that its insurance policy provides coverage for any current and future closure of businesses due to physical loss or damage from COVID-19, and provides business income coverage in the event that COVID-19 has caused a loss or damage at the plaintiff’s property. The “all risk” policy allegedly provides business income, extra expense, civil authority, and contamination coverage. Complaint at ¶¶17-21. The policy 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 ¶28.

The owner of a dental practice in Washington sued Aspen American Insurance Company in federal court (W.D. Wash.), asserting claims for declaratory relief, breach of contract, violation of the duty of good faith, and declaratory and injunctive relief under the state Consumer Protection Act. The “all risk” policy allegedly provides business income coverage, and contained an exclusion for microbes which includes any “non-fungal micro-organ is or non-fungal, colony-form organism that causes infection or disease.” Complaint at ¶¶13, 30. The Complaint alleges that the plaintiff suffered a direct physical loss or her property due to

the COVID-19 pandemic and state-mandated closures. *Id.* at ¶¶22-23. The Complaint further alleges that the defendant wrongfully denied the plaintiff's claim for coverage without conducting an adequate investigation. *Id.* at ¶¶30-33.

The owners and operators of two restaurants sued Erie Insurance Company in separate complaints in Ohio state court (Cuyahoga County), asserting claims for declaratory relief and breach of contract. The "all risk" policy allegedly provides income protection, extra expense, civil authority, and contingent business interruption coverage. Complaint at ¶ 8. The Complaint alleges that the "coronavirus can cause direct physical harm and property damage" and Ohio's closure order "has caused direct physical harm to the Plaintiff's property." *Id.* at ¶¶ 18, 19.

An Arizona restaurant sued Capital Insurance Group, its subsidiary, and its affiliates in federal court (D. Ariz.) alleging the insurer wrongfully denied its claim for business interruption losses due to Arizona's COVID-19 closure orders. The "all-risk" policy at issue allegedly provides Business Interruption and Civil Authority coverage, and contains a Virus Exclusion. The complaint alleges that because the orders "relate to the closure of all 'non-life-sustaining businesses,'" they "evidence an awareness on the part of both state and local governments that COVID-19 causes damage to property," particularly in businesses such as restaurants where "the requisite contact and interaction causes a heightened risk of the property becoming contaminated."

A group of minor league baseball teams sued National Casualty Company, Scottsdale Indemnity Company, and Scottsdale Insurance Company in federal court (D. Ariz.) alleging the insurers wrongfully denied, or will wrongfully deny, their claims for business interruption losses due to government COVID-19 closure orders. The complaint alleges all of the teams' policies contain "materially similar" terms and include Business Income, Building and Personal Property, Civil Authority, and Extra Expense coverage, and asserts claims for breach of contract, anticipatory breach of contract, and declaratory relief. The complaint alleges that the "failure of the federal government to build an effective wall preventing the continued migration of the virus . . . meant that states took the lead in combating the virus's spread," that "[s]tate after state imposed sweeping restrictions on citizens' daily lives to protect them and stop the spread," and that "[t]he governmental response to the virus is a cause of the Teams' business interruptions." The complaint further alleges that the policies' virus exclusion does not preclude coverage because "among other reasons, it is void, unenforceable, and inapplicable."

A San Francisco event designer and producer sued Citizens Insurance Company of America in California state court (San Francisco Cty.) alleging the insurer wrongfully denied its claim for business interruption losses due to California's COVID-19 closure orders. The complaint alleges that the policy at issue provides Business Income and Extra Expense coverage, and asserts claims for breach of contract and declaratory relief. The complaint alleges that while "Plaintiff did not suffer from this virus nor was there evidence that it existed or even threatened their business establishment," because of the government closure orders, "Plaintiffs were physically unable to utilize their business premises and thus lost the physical use thereof."

The Children's Place, Inc. sued Zurich American Insurance Group in federal court (D. N.J.) seeking coverage for losses resulting COVID-19 related closure orders issued by civil authorities. The Complaint asserts the policy provides coverage under its Property Damage, Time Element, Extra Expense, and Civil or Military Authority provisions. Plaintiff alleges the policy's Contamination exclusions is "ambiguous and, therefore, unenforceable" regarding COVID-19 related losses. Complaint at ¶¶118-124.

A salon owner in New Jersey sued Fitchburg Mutual Insurance Company in federal court (D. N.J.), seeking a declaration that it is entitled to coverage for business losses caused by state closure orders. The "all-risk" policy allegedly provides Business Income,

Extra Expense, and Civil Authority coverage. Complaint at ¶¶3-5. Plaintiff alleges the insurer wrongfully denied the claim for coverage and seeks breach of contract damages. *Id.* at ¶¶8-9.

The owner/operator of several Mississippi restaurants sued State Automobile Mutual Insurance Company and State Auto Property & Casualty Insurance Company in federal court (D. Miss.) seeking damages in connection with claims for breach of contract and bad faith. Plaintiff alleges it has suffered covered business interruption losses under the commercial property policy due to the COVID-19 pandemic and related government closure orders. The Complaint alleges that the policy provides coverage for the sustained losses under the Business Income, Extra Expense, and Civil Authority provisions (Complaint at ¶16), and that the insurer’s “cursory coverage denial is arbitrary and unreasonable, done in a willful, malicious, intentional and grossly negligent manner.” *Id.* at ¶20

The owner of Anytime Fitness Plainville sued Ventapro Specialty Insurance Company in federal court (D. Mass.) seeking coverage for business losses sustained due to COVID-19 related government orders. The Complaint asserts the “all-risk” policy provides Extended Business Income, Extra Expense, and Civil Authority coverage. Complaint at ¶¶10-12. Plaintiff alleges it has not been able to operate normally and has sustained business income losses as a result of the government orders issued by the Government of Massachusetts in response to COVID-19. *Id.* at ¶¶24-25.

The owner/operator of several restaurants and a catering business sued Nautilus Insurance Company in federal court (D. Mass.) asserting claims for breach of contract and bad faith. Plaintiff alleges “its business halted completely as a result of the risk of COVID-19 infection” and was unable to operate normally, resulting in business losses. Complaint at ¶5. The Complaint alleges that the “all-risk” policy provides coverage for such loss of business income under the Extra Expense, Extended Business Income, and Civil Authority provisions. *Id.* at ¶¶8-12. Plaintiff alleges the insurer wrongfully denied its claim and “performed an unreasonable investigation or no investigation at all.” *Id.* at ¶31.

Pakachoag Acres Day Care Center, Inc. sued Philadelphia Indemnity Insurance Company in federal court (D. Mass) seeking coverage for business losses as a result of actions by civil authorities in response to COVID-19. The “all-risk” policy provides coverage for the loss of business income under Extra Expense, Extended Business Income, and Civil Authority coverage provision. Complaint at ¶¶9-12. Plaintiff alleges it “has not been able to operate normally” due to the orders issued by the Commonwealth of Massachusetts. *Id.* at ¶¶24-26.

A&R Food Service Corp. sued Travelers Property Casualty Company of America in federal court (D. Mass.) for business interruption losses related to COVID-19 civil authority orders. The policy at issue allegedly provides coverage for business income, extra expense, extended business income, civil authority, and business income from dependent properties. Complaint at ¶¶10-13. The Complaint alleges that Plaintiff has “suffered a suspension of normal business operations as defined in the Policy” as result of the COVID-19 pandemic and resulting government orders (*id.* at ¶¶25-26), and that the insurer wrongfully denied the submitted claim and “performed an unreasonable investigation or no investigation at all.” *Id.* at ¶32.

A sportswear retailer sued Twin City Fire Insurance Company in Kentucky state court (Fayette County) seeking coverage for business interruption losses as a result of COVID-19 related closure orders. Plaintiff alleges the “all-risk” policy, which includes a “Limited Fungi, Bacterial or Virus Coverage” endorsement, provides coverage for the losses sustained as a result of the government closure orders.

An Illinois restaurant sued Erie Insurance in Illinois state court (Cook County) seeking coverage for business losses sustained as a result of COVID-19 related closure orders. The Complaint alleges the closure orders deemed Plaintiff's business "non-essential" and precluded the business from operating normally. Complaint at ¶11. Plaintiff alleges the policy provides coverage for business interruption losses due to the actions of civil authorities, and the insurer wrongfully denied the claim without conducting "a full and fair investigation of the claims." Complaint at ¶15.

The owner/operator of The Westin Book Cadillac Hotel in Detroit, Michigan sued Zurich American Insurance Company in Illinois state court (Cook County) seeking coverage for COVID-19 related business interruption losses. Plaintiff alleges that the policy afforded coverage for pandemic-related loss under the policy's Business Interruption, Extra Expense, Contingent Time Element, Extended Period Liability, Cancellation of Booking, and Interruption by Civil Authority and Military Authority provisions. Complaint at ¶1. The Complaint asserts Plaintiff has sustained covered losses due to presence of COVID-19, as well as the orders and recommendations of civil authorities that travel be limited, individuals stay home, and "non-essential" businesses close. *Id.* at ¶65.

Windy City Gyros sued State Farm Fire & Casualty Co. in Illinois state court (Cook County) seeking declaratory relief and damages in connection with claims for breach of contract and bad faith. The Complaint asserts the government orders issued in response to the COVID-19 pandemic "prohibited the public from accessing Plaintiff's business, thereby causing the necessary suspension of their operations." Complaint at ¶19. Plaintiff alleges it has sustained "substantial Business Income losses and incurred Extra Expense" under the policy as a result of the government orders. *Id.* at ¶21.

New Business Interruption Class Action Filings:

The owners of restaurants in Nashville sued Erie Insurance Exchange in federal court (M.D. Tenn.) on behalf of themselves and all others similarly situated, asserting claims for declaratory relief, breach of contract, and breach of the duty of good faith and fair dealing. The "all risk" policies at issue allegedly provide business income, extra expense, and civil authority coverage. Complaint at ¶¶73-77. The Complaint alleges that all of the plaintiff restaurants have been forced to close their serving areas to the public as a result of state closure orders, resulting in lost business income. *Id.* at ¶¶53-62. The Complaint further alleges that the defendant wrongfully denied the plaintiffs' claims without conducting an investigation, and that these denials were part of a policy by the defendant to limit its losses during the pandemic. *Id.* at ¶¶92-97. The class is defined as "all persons or entities in the United States ... who own an interest in a business that served food or drink and was insured by Defendant... made (or attempted to make) a claim with Defendant arising from loss of income... related to the COVID-9, and did not receive coverage for that claim." *Id.* at ¶104.

The law firm Siegel & Siegel, P.C. sued Hartford Casualty Insurance Company on behalf of itself and all others similarly situated in federal court (S.D.N.Y.), asserting claims for declaratory and injunctive relief, and breach of contract. The "all-risk" policy at issue allegedly provides Business Income, Civil Authority, Extra Expense, and Sue and Labor coverage. Complaint at ¶¶66-69. The class is defined as all businesses subjected to a Stay at Home Order who purchased a Hartford policy containing Business Income, Extra Expense, Civil Authority, and/or Sue and Labor coverage in effect during the pandemic. *Id.* at ¶73. The Complaint alleges that the insurer has denied the plaintiff's claim for coverage under the policy, and has denied similar claims related to COVID-19 by class members on a uniform and class-wide basis.

A Massachusetts hair salon filed a [class action complaint](#) against Mapfre Insurance Company in federal court (D. Mass.) seeking coverage for business losses sustained due to COVID-19 related civil authority orders. Plaintiff alleges, as a result of the civil authority orders issued by Massachusetts and a number of other states, it was unable to operate and suffered business losses. Complaint at ¶49. The Complaint asserts the “all-risk” policy’s virus exclusion does not apply to losses sustained due to the civil authority orders issued in response to the COVID-19 pandemic. *Id.* at ¶79. The Complaint seeks a declaration that the policies issued to class members provide coverage for any “current and future business personal property losses, loss of business income, and extended special business income losses as a result of Civil Authority orders” caused by COVID-19. *Id.* at ¶ 83.

The Riverwalk Seafood Grill filed a [class action complaint](#) against Travelers Casualty Insurance Company in federal court (N.D. Ill.) for business interruption losses related to COVID-19 civil authority orders. The “all-risk” policy allegedly provides Business Income, Extra Expense, Civil Authority, and Ingress/Egress coverage. The class is defined as “all persons and entities in the United States with claims for Property Damage coverage and/or Deluxe Business Income (and Extra Expense Coverage).” Complaint at ¶36. Plaintiff alleges Travelers’ denials of coverage are “arbitrary and unreasonable, and inconsistent with the facts and plain language of the policies it issued.” *Id.* at ¶9.

T&L Catering, Inc. filed a [class action complaint](#) against The Hanover Insurance Group, Inc. and Citizens Insurance Company of America in federal court (D. N.J.) seeking declaratory relief and breach of contract damages. The “all-risk” policy allegedly provides Business Income, Extra Expense, and Civil Authority coverage, and a virus exclusion for “loss or damage caused by or resulting from any virus, bacterium or other microorganism”. The Complaint asserts the virus exclusion does not apply because the losses incurred by Plaintiffs’ and other Class Member were caused by “precautionary measures taken by their respective States and/or counties to prevent the spread of COVID-19 in the future.” Complaint at ¶44. The Nationwide Class is defined as all policyholders in the U.S. who purchased commercial property coverage from the insurer and who have been denied coverage for lost income after being ordered by a governmental entity to shut down or limit business operations in response to the pandemic. *Id.* at ¶51.

The operator of a Seattle entertainment rental equipment company [sued](#) The Hartford Financial Services Group, Inc., Hartford Fire Insurance Company, and Hartford Insurance Company of the Midwest, on behalf of itself and all others similarly situated, in federal court (S.D. Fla.) for declaratory relief. The “all risk” policy allegedly provides business income, extra expense, civil authority, and business income from dependent properties coverage. Complaint at ¶ 1. The policy does not contain a virus exclusion. *Id.* The Complaint alleges the insurers have “systematically denied and continue to deny and refuse to provide payment for insurance claims for coverage for similar losses and expenses by insureds holding policies that are, in all material respects, identical.” *Id.* at ¶ 3. The Complaint further alleges that “[c]ontamination of the Insured Property would be a direct physical loss requiring remediation to clean the surfaces within the Insured Property.” *Id.* at ¶ 33. The four proposed classes are defined as all persons and entities: (1) “with Business Income coverage under a property insurance policy issued by Defendants that suffered a suspension of business due to COVID-19 at the premises covered by the business income coverage;” (2) “with Civil Authority coverage under a property insurance policy issued by Defendants that suffered loss of Business Income and/or Extra Expense caused by a Closure Order;” (3) “with Extra Expense coverage under a property insurance policy issued by Defendants that sought to minimize the suspension of business in connection with COVID-19 at the premises covered by their property insurance policy;” and (4) “with Business Income from Dependent Properties coverage under a property insurance policy issued by Defendants that suffered an actual loss of Business Income caused by direct physical loss or physical damage at a dependent property or properties.” *Id.* at ¶ 59.

The operator of an inn sued Westchester Surplus Lines Insurance Company, on behalf of itself and all others similarly situated, in federal court (S.D. Fla.) for declaratory relief. The “all risk” policy allegedly provides business income, extra expense, and civil authority coverage. Complaint at ¶ 1. The policy does not contain a virus exclusion. *Id.* The Complaint alleges the insurer “has systematically denied and continues to deny and refuse to provide payment for insurance claims for coverage for similar losses and expenses by insureds holding policies that are, in all material respects, identical.” *Id.* at ¶ 3. The Complaint further alleges that “[c]ontamination of the Insured Property would be a direct physical loss requiring remediation to clean the surfaces within the Insured Property.” *Id.* at ¶ 29. The three proposed classes are defined as all persons and entities: (1) “with Business Income coverage under a property insurance policy issued by Defendant that suffered a suspension of business due to COVID-19 at the premises covered by the business income coverage;” (2) “with Civil Authority coverage under a property insurance policy issued by Defendant that suffered loss of Business Income and/or Extra Expense caused by a Closure Order;” and (3) “with Extra Expense coverage under a property insurance policy issued by Defendant that sought to minimize the suspension of business in connection with COVID-19 at the premises covered by their property insurance policy.” *Id.* at ¶ 59.

A dentist and operator of a dentistry sued The Cincinnati Insurance Company, The Cincinnati Casualty Company, and The Cincinnati Indemnity Company, on behalf of themselves and all others similarly situated, in federal court (S.D. Ohio), asserting claims for declaratory relief and breach of contract. The “all risk” policies allegedly provide business income, extra expense, and civil authority coverage. Complaint at ¶¶ 25, 29. The Complaint alleges the insurer “incorrectly interprets ‘direct physical loss or damage to [the] insured premises’ to exclude virus that does not cause a visible physical effect on the premises.” *Id.* at ¶ 68. The proposed class is defined as “[a]ll policyholders in the United States who purchased commercial property coverage, including business or interruption income (and extra expense) coverage from Defendant and who have been denied coverage under their policy for lost business income after being ordered by a governmental entity, in response to the COVID-19 pandemic, to shut down or otherwise curtail or limit in any way their business operations.” *Id.* at ¶ 74.

A California child care facility filed a class action lawsuit against Great American Insurance Company in federal court (C.D. Cal.) alleging the insurer wrongfully denied its claim for business interruption losses due to California’s COVID-19 closure orders, and asserts claims for breach of contract and declaratory relief. The “all-risk” policy allegedly provides Business Income, Extra Expense, Extended Business Income, Civil Authority, and Communicable Disease coverage. The complaint alleges that the policy’s virus exclusion does not apply because “a significant legal proximate cause to Plaintiff’s . . . losses [] was the civil authority orders issued by the State of California . . . to prevent the spread of COVID-19,” and that even if the virus exclusion were to apply, the policy’s Communicable Disease coverage renders such exclusion inapplicable. The complaint further asserts that “the policy does not exclude coverage for a national state of disaster like the current pandemic, which is more akin to a tornado than damage from a microorganism itself.”

Steadfast Files Declaratory Business Interruption Suit:

Steadfast Insurance Company sued the operators of jewelry stores in Ohio state court (Summit County) for a declaration concerning defendants’ claims for coverage for COVID-19-related losses. The policies allegedly provide coverage for “direct physical loss of or damage caused by a Covered Cause of Loss to Covered Property” and civil authority coverage. Complaint at ¶¶ 9, 10, 18. The Complaint alleges that coverage is or may not be afforded, in part, because there has been no direct physical loss of damage caused by a covered cause of loss to covered property. *Id.* at ¶ 18. The Complaint alleges that the defendants previously filed suit against the insurer in the Civil District Court for the Parish of Orleans, Louisiana, wherein they asserted claims for declaratory relief, breach of contract and bad faith against the insurer. *Id.* at ¶ 16. The Complaint alleges that the

insurers' coverage investigation is not yet complete. *Id.* at ¶ 17. The insurer seeks a declaration of the parties' rights and obligations under the policies and a declaration that it has not breached the duty of good faith and fair dealing or denied coverage in bad faith. *Id.* at ¶ 28.

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

Adam J. Singer

Associate – Washington, D.C.

Phone: +1 202.688.3508

Email: asinger@crowell.com