

CLIENT ALERT

Insurers' COVID-19 Notepad: What You Need to Know Now (Week of May 18)

May.19.2020

US Treasury Dept. Statement on COVID-19 Legislation:

In a May 8th [letter](#) to the Senate, the U.S. Department of the Treasury expressed concerns regarding proposed legislation compelling insurers to cover COVID-19 related business interruption claims. The Treasury stated that, although insurers should pay valid claims, it is concerned that the proposed legislation fundamentally conflicts with the contractual nature of insurance obligations and could introduce stability risks to the insurance industry.

COVID-19 Legislative Developments:

Louisiana Senate Bill 477 ([first reported on here](#)) has been abandoned by lawmakers. The Louisiana Bill would have mandated every policy insuring against loss to property, including loss of use and occupancy and business interruption, provide coverage for business interruption due to COVID-19. Louisiana S.B. 477 received harsh criticism from the industry, with Louisiana Insurance Commissioner telling lawmakers the bill was “extremely dangerous,” and the NAIC commenting to Congress that the industry could not afford the losses that would result from such legislation. Several other bills, also mandating business interruption coverage for COVID-19 related losses, are still before several other state legislatures.

COVID-19 & State Regulation:

The New Jersey Department of Banking and Insurance issued [Bulletin 20-22](#) directing insurers to provide premium refunds, credits, and reductions to New Jersey policyholders for private passenger auto, commercial auto, workers' compensation, commercial multiple-peril, commercial liability, and medical malpractice insurance, as well as any other line of coverage “where the measures of risk have become substantially overstated as a result of the COVID-19 pandemic” for each month that the COVID-19 public health emergency is in effect.

NAIC Issues Coordinated COVID-19 Data Call:

The National Association of Insurance Commissioners (NAIC) [announced](#) a coordinated data call related to business interruption insurance and COVID-19. The gathered data “will assist state insurance regulators and others, in the course of analysis of the financial condition of commercial insurers.” Insurers who issued business interruption coverage in 2019 or 2020 must submit requested premium data by May 22, and data regarding claims no later than June 15.

New Business Interruption Suits Against Insurers:

The owner of a catering business [sued](#) Donegal Mutual Insurance Company in Pennsylvania state court (Philadelphia County) seeking a declaration that its policy provides coverage for civil authority closures and physical loss or damage due to the

coronavirus. The “all risk” policy at issue allegedly provides for business income, extra expense, civil authority, and contamination coverage. Complaint at ¶9.

A legal support services firm operating in Pennsylvania, New York, Illinois, and Florida, sued Hartford Fire Insurance Company in Pennsylvania state court (Philadelphia County) asserting claims for declaratory relief, breach of contract, injunctive relief, breach of good faith and fair dealing, bad faith, and negligence claims against its brokers. The “all risk” policy at issue allegedly provides business income, contingent business income, expense and civil authority coverage. Complaint at ¶39. According to the Complaint, Hartford denied coverage on the grounds that any loss suffered as a result of coronavirus was excluded, but the insurance broker never explained that the policy would preclude coverage for losses related to viruses, pandemics, or related civil orders. *Id.* at ¶¶47-50.

Motherway & Napleton LLP sued Sentinel Insurance Ltd. in Illinois state court (Cook County) seeking coverage for COVID-19 losses under its Spectrum Business Owners Policy. The complaint asserts “as a result of the Closure Order [issued by the Governor of Illinois], and the presence of the virus on Plaintiff’s Premises,” the Plaintiff suffered covered loss under the policy. Plaintiff seeks damages in connection with breach of contract and bad faith claims handling.

The owners/operators of several bars and restaurants sued Illinois Casualty Co. in Iowa state court (Polk County) seeking coverage for COVID-19 losses under the Business Income, Extra Expense, and Civil Authority provisions of the policy. The complaint asserts Plaintiffs sustained significant losses and were forced to terminate 90 employees due to government orders suspending and limiting business operations. Complaint at ¶¶ 22-25. Plaintiffs assert Illinois Casualty Co.’s denial based on the virus exclusion and no direct physical loss or damage to the insured premises was in bad faith.

ABC Daycare sued West Bend Mutual in Kentucky state court (Madison Circuit Court) seeking coverage for business interruption losses related to COVID-19 civil authority orders. The complaint alleges as a result of “the Kentucky Order to Close Licensed Child Care Centers” Plaintiff was required to “discontinue operations” at the insured premises. Complaint at ¶ 11. Plaintiff seeks coverage under the policy’s “Communicable Disease Business Income and Extra Expense Coverage.” *Id.* at ¶ 13. Plaintiff seeks declaratory relief and asserts claims for breach of contract, bad faith, the violation of Kentucky Insurance Code and Kentucky Unfair Claims Settlement Practices Act, and seeks punitive damages.

Cynthia’s Ristorante sued Cincinnati Insurance Company in Kentucky state court (McCracken Circuit Court) for declaratory relief, alleging that the applicable policy provides coverage for loss of Business Income, Extra Expense coverage, and for loss due to the actions of a Civil Authority. According to the Complaint, as a result of state orders, Plaintiff’s business was required to “cease all on-site consumption of food and beverage.” Complaint at ¶14. Plaintiff contends Cincinnati’s reliance on the pollution exclusion in support of its denial of coverage is evidence of bad faith. *Id.* at ¶9

The owners and operators of several Massachusetts and New Hampshire bars and restaurants sued Cincinnati Casualty Co. in federal court (D. Mass.) seeking coverage in connection with COVID-19 losses under the all-risk policy’s Business Income, Extra Expense, and Civil Authority provisions. The Complaint asserts Massachusetts and New Hampshire orders in response to the pandemic required plaintiffs’ restaurants and bars to close and prohibited them from operating in the usual course. Complaint at ¶¶ 38-40. As a result, Plaintiffs allege they have suffered “direct physical loss or, or damage to, their property caused by COVID-19.” *Id.* at ¶¶ 42-43.

Chester C. Chianese DDS sued Travelers in federal court (D. N.J.) alleging coverage for its forced closure in response to orders issued by the Governor of New Jersey and the New Jersey State Board of Dentistry. Although the policy contains a virus and bacterium exclusion, Plaintiff seeks coverage under the policy's Business Income, Extra Expense, Contamination, Civil Authority and other coverage provisions. The complaint alleges that Travelers denied the claim.

A dental care provider sued Hanover Insurance in federal court (D. N.J.) seeking declaratory relief and asserting breach of contract. Plaintiff alleges its "all-risk" policy covers "loss of business income sustained and the actual expenses incurred when access to the Insured Premises is prohibited by order of civil authority." Complaint at ¶27. The complaint alleges the virus exclusion does not apply, as "Plaintiff's losses were caused by the civil authority orders issued by Governor Murphy, The New Jersey Office of the Attorney General and the New Jersey State Board of Dentistry to mitigate the spread of COVID-19 in the future." *Id.* at ¶33.

A periodontics practice sued Hanover Insurance in federal court (D. N.J.) seeking coverage for COVID-19 related losses. Plaintiff alleges that it was required to shut down in response state orders issued related to COVID-19, and has incurred "a substantial loss of business income and additional expenses covered under the Policy. Complaint at ¶38. Plaintiff seeks coverage under the Business Interruption, Extra Expense, and Civil Authority coverage provisions of the policy.

A dental practice sued Hartford in federal court (D. N.J.) for business interruption losses related to COVID-19 civil authority orders. Plaintiff alleges that the "all-risk" policy provides coverage for Business Interruption, Extra Expense, Contamination, and the actions of civil authorities, and that the policy's virus exclusion is not applicable. The complaint asserts plaintiff has been required to "cancel or postpone any elective, non-essential, or routine service" and, as a result, has sustained a covered loss under the policy. Complaint at ¶¶46-49.

Ambulatory Care Center sued Sentinel Insurance in federal court (D. N.J.) seeking coverage for business interruption losses related to COVID-19. Plaintiff alleges that the "all-risk" policy provides coverage for Business Interruption, Extra Expense, and the actions of civil authorities. The complaint alleges the policy also includes an endorsement for coverage in the event of a virus, which stated, "We will pay for loss or damage by 'fungi,' wet rot, dry rot, bacteria and virus." Complaint at ¶21.

Brain Freeze Beverage sued Hartford in federal court (S.D.N.Y.) seeking coverage for business losses sustained due to COVID-19 and related government shutdown orders. The complaint alleges that, as a result of the presence of COVID-19 and the actions of civil authorities, Plaintiff has sustained covered losses under an all-risk policy's Civil Authority, Business Income, Extended Business Income, Extra Expense, and Equipment Breakdown coverage provisions. Complaint at ¶16.

Goodwill Career Pathways Institute filed a declaratory action against Philadelphia Indemnity Insurance Co. in Oklahoma state court (Cleveland County) seeking coverage for COVID-19 related losses under the policy's Business Income, Extra Expense, and Civil Authority coverage provisions. Plaintiff alleges local and state government orders required it to cease operations and prohibited it from accessing its property. Complaint at ¶16. Plaintiff alleges the virus exclusion is void or invalid as "no consideration was provided to [Plaintiff] in exchange for the addition of [the exclusion]," and no consent was obtained. *Id.* at ¶12.

The Opal Lounge Hair and Nail Boutique sued West Bend Mutual Insurance Company in Ohio state court (Summit County) asserting claims for breach of contract and of the duty of good faith and fair dealing. Plaintiff alleges it has sustained losses due

to the closure orders issued by the Governor of Ohio (Complaint at ¶133), and that such losses are covered by its “all-risk” under the “Communicable Disease Business Income and Extra Expense Coverage.” Complaint at ¶128.

The School for Creative Tots sued West Bend Mutual Insurance Co. in Ohio state court (Hamilton County) alleging covered losses under the policy’s Business Income, Extra Expense, and Civil Authority provisions. Plaintiff asserts the policy’s virus exclusion “does not apply when the claim is for loss of business income and extra expense.” Complaint at ¶10.

Retina Specialists of Ohio sued Selective Insurance Co. in Ohio state court (Cuyahoga County) alleging that as a result closure orders it has been unable to operate its business. Complaint at ¶148. The Complaint alleges that the “all-risk” policy at issue provides Business Income, Extra Expense, and Civil Authority coverage, and that the insurer wrongfully denied the claim. *Id.* at ¶142.

A Nashville restaurant owner sued The Cincinnati Insurance Company in federal court (M.D. Tennessee), asserting claims for declaratory relief, breach of contract, and punitive damages. Complaint at ¶¶43-54 The “all risk” policy at issue allegedly provided business income, extra expense, and civil authority coverage, and did not contain a virus exclusion. *Id.* at ¶¶11, 26-34. The insurer allegedly issued a “blanket denial” of the plaintiff’s claims, on the basis that the plaintiff’s business did not suffer “direct physical loss. *Id.* at ¶¶7-10.

A Dallas wine club sued The Hartford Fire Insurance Company in federal court (N.D. Texas), asserting claims for breach of contract, violations of the Texas Insurance Code, and breach of the duty of good faith and fair dealing. The policy at issue allegedly provides business income and civil authority coverage. Complaint at ¶¶33-34. The Complaint alleges that contamination and potential contamination of the insured premises by COVID-19 constitutes a direct physical loss under the policy, requiring remediation to clean the restaurant. *Id.* at ¶29-30. It alleges the insurer denied the plaintiff’s claim for coverage without conducting a meaningful investigation. *Id.* at ¶¶38-41.

A Florida dental provider sued Bankers Insurance Company in Florida state court (Broward Cty.) alleging the insurer breached the insurance contract issued to the provider by refusing to pay for losses caused by government COVID-19 closure orders.

An Arizona resort sued Illinois Union Insurance Company in federal court (D. Ariz.) alleging that the insurer wrongfully denied the resort’s claims for business interruption due to Arizona’s COVID-19 government closure orders. The complaint alleges that the policy at issue provides coverage for a “pollution condition,” and that the business interruption losses arising out of COVID-19 constitute a covered pollution condition under the policy.

A Florida business sued Certain Underwriters at Lloyd’s, London in federal court (M.D. Fla.) for “anticipated breach of insurance policies from the denial of business interruption . . . coverage” for Plaintiff’s losses due to Florida civil authority orders issued to curb the spread of COVID-19. The complaint alleges that Lloyd’s is “putting off coverage decisions via Reservation of Rights letters,” and seeks a declaration that the insurer is required to provide coverage under the policy at issue.

A restaurant sued Scottsdale Insurance Company in Florida state court (Hillsborough Cty.) for denying its claim for business income losses due to Florida’s COVID-19 closure orders. The complaint alleges that the all-risk policy covers the losses, and that “[a]ny effort by Underwriter to deny the reality that the virus causes physical loss and damage would constitute a false and potentially fraudulent misrepresentation that could endanger policyholders and the public.”

An Alabama dental practice sued The Cincinnati Insurance Company in federal court (N.D. Ala.) for denying its claim under an all-risk policy for losses sustained due to Alabama's COVID-19 closure orders. The complaint alleges the policy does not contain the ISO virus exclusion, that the coronavirus "renders the Covered Property unsafe, uninhabitable, or otherwise unfit for its intended use, which constitutes direct physical loss" and therefore that Plaintiff's losses are covered under the policy.

New Business Interruption Class Action Filings:

The owner of a South Carolina restaurant sued Pennsylvania National Mutual Casualty Insurance Company in federal court (M.D. Pa.) on behalf of itself and all others similarly situated, asserting claims for breach of contract, breach of the duty of good faith and fair dealing, and unjust enrichment. The "all risk" policy at issue allegedly provides business income, extra expense, and civil authority coverage. Complaint at ¶¶14-20. The Complaint alleges that plaintiff's claim was denied based on the policy's virus exclusion, which provides that the insurer "will not pay 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 ¶¶28-30. The plaintiff asserts that, under Pennsylvania law, the pandemic is an "unforeseen event that ... does not fall within a reasonable interpretation of the ... exclusion." *Id.* at ¶¶31-33. The class is defined as anyone who has made an insurance claim with the defendant for loss of business income due to COVID-19, which the insurer "denied or has otherwise failed to acknowledge ... or pay." *Id.* at ¶37.

Windy Hill Dentistry 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, the American Dental Assoc. and similar dental organizations, it was prohibited from treating non-urgent patients. The class complaint seeks coverage under the all-risk policy's Business Income, Extra Expense, and Civil Authority coverage provisions. According to the Complaint, "Hartford has denied claims related to COVID-19 on a uniform and class wide basis, without individual bases or investigations." Complaint at ¶ 127.

Image Dental LLC filed a class action complaint against Citizens Insurance Company of America in federal court (N.D. Ill.) seeking coverage for COVID-19 losses under the Business Income, Extra Expense, and Civil Authority provisions of the all-risk policies issued to class members. The class complaint asserts a determination must be reached regarding whether coverage under policies issued to class members is available for the suspension of business operations caused by the closure orders issued in response to the coronavirus.

Plaintiffs sued Cincinnati Insurance Company in U.S. District Court (N.D.Ill.) on behalf of itself and those similar situated for business losses sustained due to COVID-19 and arising from orders issued by the Governor of Texas and several other states. The class complaint asserts Plaintiffs and members of the putative class were prohibited access to their premises by the civil authority orders issued to reduce the spread of coronavirus. Plaintiffs allege that the standard policy forms utilized in Cincinnati policies provide coverage of the incurred losses under the Business Income, Extra Expense, and Civil Authority provisions.

Plaintiff Upmerch has filed a class action complaint against Continental Casualty Company in Illinois state court (Cook County) 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. Plaintiffs allege that the standard policy forms utilized in Cincinnati policies provide coverage of the incurred losses under the Business Income, Extra Expense, and Civil Authority provisions.

Rinnigade Art Works filed a class action [complaint](#) against Hartford Fire Insurance Company in federal court (D. Mass.) seeking class wide damages in connection with business losses allegedly sustained due to COVID-19 and arising from closure orders. The class complaint alleges the presence of the coronavirus and related closure orders have resulted in the class members' "property being damaged, access to the property being denied, customers being prevented from physically occupying the property, the property being physically uninhabitable by customers, the function of the property being nearly eliminated or destroyed, and/or a suspension of business operations occurring at the property." Complaint at ¶42. The complaint seeks coverage under the all-risk policy's Business Income, Extra Expense, Civil Authority, and Business Income from Dependent Properties coverage provisions. Plaintiff asserts that the claims "derive directly from Hartford's systematic and uniform refusal to pay insureds for covered losses and the actions taken by civil authorities to suspend business operations." *Id.* at ¶49.

Tabella restaurant filed a class [complaint](#) against State Auto Property and Casualty Insurance Co. in federal court (S.D.Miss.) seeking coverage under allegedly common policy forms in the all-risk policies issued to class members. Plaintiff alleges, on behalf of itself and members of the class, it has sustained losses covered by Business Income, Extra Expense, and/or Civil Authority provisions arising from the spread of COVID-19 in the community and the orders issued by the Governor of Mississippi (*e.g.* Executive Order 1463). Complaint at ¶35.

Eds Burger Joint has filed a class action [complaint](#) in the U.S. District Court (S.D. Miss.) against Travelers Casualty Insurance Company of America seeking coverage for the forced closure or substantial reduction of operations in response to civil authority orders. Complaint at ¶ 83. Plaintiff seeks coverage under the policy's Business Income and Extra Expense coverage provisions. According to the complaint, Travelers denied the claim. *Id.* at ¶ 40.

A dental practice filed a class action [complaint](#) against Owners Insurance Company in federal court (D. N.J.) for business interruption losses related to COVID-19 civil authority orders. Plaintiff alleges that the "all-risk" policy provides coverage for Business Interruption, Extra Expense, Sue and Labor, and the actions of civil authorities. The complaint asserts plaintiffs have been required to limit operations to emergency care treatment as a result of the action taken by state and local s authorities and, as a result, Plaintiff has sustained "a substantial loss of business income and additional expenses covered under the Policy." Complaint at ¶¶ 13-16.

J.G. Optical [sued](#) Travelers on behalf of itself and those similar situated for relief and damages for anticipatory breach of contract. The complaint seeks coverage for losses arising from forced closure due to orders from state and local authorities under and all-risk commercial property policies for Business Income, Civil Authority, and Extra Expenses provisions. Plaintiff alleges that, although the policy contains a virus exclusion, the policy provides coverage for COVID-19 losses because such losses were caused by "precautionary measures taken by the [Class Members'] respective States to prevent the spread of COVID-19 in the future, not because coronavirus was found in or on Plaintiff's insured property." Complaint at ¶39.

The Eye Care Center of N.J. filed a class action [complaint](#) against Hartford in federal court (D. N.J.) for anticipatory breach of contract under an all-risk commercial property policies' Business Income, Civil Authority, and Extra Expenses provisions. Plaintiff alleges that, although the policy contains a virus exclusion, the policy provides coverage for COVID-19 losses because such losses were caused by "precautionary measures taken by the [Class Members'] respective States to prevent the spread of COVID-19 in the future, not because coronavirus was found in or on Plaintiff's insured property." Complaint at ¶42.

Slate Hill Daycare Center filed a class action [complaint](#) against Utica National Insurance Group in federal court (S.D.N.Y.) seeking coverage for business interruption losses related to COVID-19 civil authority orders. The class complaint alleges as a result of

stay-at-home orders issued by New York it has been unable to operate its business at full capacity, and that coverage applies in though the policy contains a virus exclusion. Complaint at ¶29.

Spitale Laser Spa sued Erie Insurance Company in federal court (W.D.N.Y.) alleging that an “all-risk” policy (which allegedly does not contain a virus exclusion) provides coverage for “business income coverage in the event of business interruption or closures by order of Civil Authority, and for business losses as a result of property damage at its salon.” Complaint at ¶ 13. Plaintiff alleges it was “unable to open its doors as a direct consequence of the Civil Authority stay-at-home orders for public safety issued by the Governor of New York and the State of New York generally” (*id.* at ¶ 39), and that Erie denied Plaintiff’s lost income claim. *Id.* at ¶ 40.

Fresco restaurant filed a class action complaint against Liberty Mutual Insurance (“Liberty”) in federal court (S.D.N.Y.). On behalf of themselves and members of the class, Plaintiff seek coverage for business losses sustained due to COVID-19 and related government shutdown orders under Liberty’s all-risk commercial property insurance policies. The class action complaint alleges the policies provide Business Income, Extra Expense, and Civil Authority coverage, but that Liberty has “denied claims related to COVID-19 on a uniform and class wide basis, without individual basis or investigation.” Complaint at ¶70. Plaintiffs allege that policy’s virus exclusion is inapplicable, as the suffered losses were caused by “precautionary measures taken by government ... to prevent the spread of COVID-19 in the future, not because coronavirus was found in or on Plaintiffs’ insured property. *Id.* at ¶40.

Restaurant Sero, on behalf of itself and those similarly situated, sued Berkley Insurance Company in federal court (D. Or.) seeking coverage for COVID-19 related losses. The complaint seeks coverage under an all-risk commercial property policies’ Business Income, Civil Authority, and Extra Expenses provisions. Plaintiff alleges “[t]he prohibitions and limitations imposed by the [government orders] prohibited access to, use of, and operations at and by [Plaintiff], its employees, and its customers. As a result of the [government orders],” Plaintiff’s restaurant in whole and in part became “unusable and/or lost the ability to generate income,” and Plaintiff suffered covered losses. Complaint at ¶¶75-76.

Saucy Brew Works filed a class action complaint against Cincinnati Insurance Company in Ohio state court (Cuyahoga County) seeking class wide damages in connection with business losses sustained due to COVID-19 and arising from state and local stay at home orders. The complaint alleges that the Cincinnati policy is an “all-risk” policy providing coverage of incurred losses under the Business Income, Civil Authority, and Extra Expense policy provisions.

The owner of an orthodontics practice sued Massachusetts Bay Insurance Company in federal court (W.D. Wash.) on behalf of itself and all others similarly situated, asserting claims for declaratory relief and breach of contract. The policy at issue allegedly provides business income, extra expense, extended business income, civil authority, and denial of access to premises coverage. Complaint at ¶14. The Complaint alleges that due to state civil closure orders it was prohibited for providing services but for urgent and emergency procedures. *Id.* at ¶21. The plaintiff further alleges that it believes its insurer intends to deny its claim and will deny coverage for other similarly situated policyholders. *Id.* at ¶27. The class consists of breach of contract and declaratory relief subclasses, as well as Washington and nationwide subclasses, of plaintiffs who are insured under MBIC policies. *Id.* at ¶30.

The owner of a medical spa business in Seattle sued Sentinel Insurance Company in federal court (W.D. Wash.) on behalf of itself and all others similarly situated, asserting claims for declaratory relief and breach of contract. The policy allegedly provides business income, extra expense, extended business income, and civil authority coverage. Complaint at ¶14. The Complaint alleges that due to state-mandated closure orders, it has been prohibited from operating its business and sustained direct

physical loss and/or damage under its policy (*id.* at ¶¶20-26), and that Sentinel denied its claim. *Id.* at ¶31. The class consists of breach of contract and declaratory relief subclasses, as well as Washington and nationwide subclasses, of plaintiffs who are insured under Sentinel policies. *Id.* at ¶34.

The owner of a dental practice in Seattle sued Aspen American Insurance Company in federal court (W.D. Washington) on behalf of itself and all others similarly situated, asserting claims for declaratory relief and breach of contract. The policy allegedly provides practice income, extra expense, extended practice income, and civil authority coverage. Complaint at ¶12. The Complaint alleges that no COVID-19 virus has been detected on its premises, but that its property has sustained direct physical loss and/or damages related to the virus and state closure orders. *Id.* at ¶¶20-25. The plaintiff alleges that its claim was denied via voice message, and that “Aspen has denied and will deny coverage to other similarly situated policyholders.” *Id.* at ¶¶25-26. The class consists of breach of contract and declaratory relief subclasses, as well as Washington and nationwide subclasses, of plaintiffs who are insured under Aspen policies. *Id.* at ¶28.

The owner of an oral surgical practice sued Ohio Security Insurance company in federal court (W.D. Washington) on behalf of itself and all others similarly situated, asserting claims for declaratory relief and breach of contract. The policy allegedly provides business income, extra expense, extended business income, and civil authority coverage. Complaint at ¶12. The Complaint alleges that no COVID-19 virus has been detected on its premises, but that its property has sustained direct physical loss and/or damages related to the virus and state closure orders. *Id.* at ¶¶9, 21-25. The plaintiff alleges that the insurer denied its claim, and that it “intends to deny, has denied and/or will deny coverage to Plaintiff and other similarly situated policyholders. *Id.* at ¶26. The class consists of breach of contract and declaratory relief subclasses, as well as Washington and nationwide subclasses, of plaintiffs who are insured under OSIC policies. *Id.* at ¶28.

A childcare center in Michigan sued West Bend Mutual Insurance Company in federal court (E.D. Wisconsin) on behalf of itself and others similarly situated, asserting claims for declaratory relief and breach of contract. The “all risk” policy allegedly provides business income, extra expense, civil authority, sue and labor, and “communicable disease business income and extra expense coverage,” which allegedly promises to pay for “any loss or expense incurred from the temporary shutdown or suspension of operations ordered by a ‘board of health or similar governmental board’ ‘due to an outbreak of a communicable disease or a waterborne pathogen’ at the insured premises. Complaint at ¶¶7-8. The Complaint alleges that plaintiff has been forced to suspend or reduce operations as a result of COVID-19 and state closure orders (*id.* at ¶10), and that one of their active enrollees and the child’s family had tested positive for COVID-19. *Id.* at ¶33. The insurer allegedly denied the plaintiff’s claims for coverage. *Id.* at ¶41. The nationwide class consists of declaratory judgment and breach of contract subclasses of plaintiffs who purchased similar coverage from West Bend. *Id.* at ¶43.

An Alabama restaurant has filed a class action lawsuit against The Cincinnati Insurance Company in federal court (N.D. Al.) alleging that the all-risk policy it purchased does not contain a virus exclusion, and that Cincinnati wrongfully denied coverage for losses the company incurred due to COVID-19 government closure orders “in blatant breach of its contractual obligations.”

A Nevada beauty salon filed a class action lawsuit against Sentinel Insurance Company in federal court (D. Conn.) alleging the insurer wrongfully denied its claim for business interruption caused by Nevada COVID-19 government closure orders. The salon alleges that in addition to providing coverage for business interruption and acts of civil authority, the policy it purchased also incorporates a bacteria or virus coverage endorsement, which provides coverage for a suspension of operations “necessary due to loss or damage to property caused by . . . virus.”

An Ohio cosmetic medical spa filed a class action [lawsuit](#) against Twin City Fire Insurance Company in federal court (D. Conn.), alleging that it wrongfully denied the spa's claim for losses due to government COVID-19 closure orders. The complaint alleges that the policy contains a bacteria or virus coverage endorsement, which provides "limited coverage" if a suspension of operations is "necessary due to loss or damage to property caused by . . . virus." The spa alleges that Twin City has "on a widescale and uniform basis, refused to pay its insureds under its Business Income, Civil Authority, and Extra Expense coverages for losses due to COVID-19."

An Alabama children's drama studio and several Alabama retail stores filed a class action [lawsuit](#) in federal court (D. Ala.) against Mt. Hawley Insurance Company for denying Plaintiffs' claims for losses incurred due to Alabama's COVID-19 government closure orders. The owners allege that they sustained "direct physical loss . . . because their business premises were rendered physically unusable for their intended purposes." The owners also assert that the government authority exclusion in their respective policies is "unenforceable" because it is "overly broad, ambiguous, irreconcilable with other policy provisions," and would "render the policies' coverage illusory" if enforced.

A San Francisco retailer filed a class action [lawsuit](#) against Travelers in federal court (N.D. Cal.) after the insurer denied its claim for losses arising from California's COVID-19 closure orders. The complaint alleges that "insurance companies operating in California . . . are categorically denying claims from retailers," and that such "denials are often made with little or no investigation and without due regard for the interests of insureds." The complaint notes that even when California relaxes its mandates, the retailer "will encounter continued loss of business income due to those orders because . . . government officials have stated that densely occupied public spaces are dangerously unsafe." The retailer seeks a declaration that the insurer is required to provide coverage despite the virus exclusion in the applicable policy.

A California music venue filed a class action [lawsuit](#) against First Mercury Insurance Company in federal court (N.D. Cal.) alleging the insurer wrongfully denied its claim for business interruption losses due to California COVID-19 closure orders. The venue alleges that "the denial appears to be based on an unreasonable reading of [the] policy, which tracks form policies issued throughout California on a take-it-or-leave-it basis." The venue seeks a declaration that the policy covers the losses it suffered due to the closure orders.

Hartford Files COVID-19 Lawsuit:

Hartford Fire Insurance Company [sued](#) Moda LLC (one of its insureds) in Connecticut state court (Dist. Hartford). Hartford seeks a declaration that the losses suffered by Moda LLC are excluded by the policy's virus exclusion and otherwise not covered by the policy at issue which, Hartford alleges, requires "'direct physical loss of or direct physical damage to property,' and the presence or suspected presence of coronavirus does not constitute direct physical loss or damage to property in these circumstances."

U.K. and Europe:

The Association of British Insurers, in response to remarks by U.K. based Airmic Ltd. urging insurers to cover COVID-19 related losses, [emphasized](#) that forcing insurers to pay for COVID-19 related claims that aren't covered in contract would be "a shortcut to insolvency." The ABI has stated "each claim will be examined on its merits by the insurer according to all policy wording."

The European Insurance and Occupational Pensions Authority (EIOPA) stated that national governments must provide insurance coverage for pandemic driven lockdowns in the future. The regulator asserts it was “impossible for insurers to control risks like business interruption that are not due to damage like floods or fire,” and to now mandate coverage for COVID-19 related losses through retroactively changing policies would be wrong.

Lloyd’s of London reports that it expects to pay out approximately \$3 to \$4.3 billion in connection with COVID-19 related claims, on track to be the largest payout since the September 11th attacks. However, Lloyd’s said, once all factors are taken into account, the total impact of the pandemic on the insurance industry is likely to be far bigger.

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

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