

Litigation Ramps Up on COVID-driven Business Interruption

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As we have written in Business Bulletins in each of the last few weeks (first [here](#), then [here](#)), regulatory pressure on insurers to pay claims outside the boundaries of their policies has been intense. As we predicted, litigation has begun to ramp up in a meaningful way, both from individual policyholders and in the form of class action suits. Some examples are outlined in the following:

- Continuing a growing list of policyholder lawsuits against insurers, a group of law firms together filed six class-action lawsuits against insurers in federal courts from California to New York on Friday on behalf of commercial policyholders seeking business interruption coverage for coronavirus-related losses. These latest filings continue to address common themes including assertions that the presence of COVID-19 in or around a property constitutes physical damage under the terms of the policies and coverage is also triggered by the civil authority clauses in business interruption policies.
- Interestingly, observers are predicting that a PA Supreme Court ruling last week in a suit having nothing to do with insurance, will yield conclusions that some will try to use to support BI coverage claims. In denying a challenge to the Governor's power to close non-life sustaining businesses, the Court concluded that the "COVID-19 pandemic is, by all definitions, a natural disaster and a catastrophe of massive proportions." Policyholder advocates quickly seized on this and claim that by analogizing the COVID-19 pandemic to natural disasters such as an earthquake, tornado or fire, the court allegedly showed that

the COVID-19 pandemic is indistinguishable from the other kinds of events which property coverage is designed to cover. According to policyholders, the court's analogies undermine the carriers' position that this is not the type of occurrence for which property coverage was intended to apply. Policyholder advocates also urge that the actual presence of the virus at an insured's property is not dispositive as to whether the insured's loss has been caused by physical property damage. They contend that this ruling demonstrates that the issue is whether a property has been rendered unusable by virtue of physical damage either at that location or in the broader disaster area in which it is located. They claim that the virus is so pervasive as to be presumed to be physically present almost everywhere and, as a result, even a deep cleaning of a specific property cannot eradicate this damage.

- In the latest batch of federal lawsuits seeking class-action status, policyholders represented by four law firms in Chicago, Houston, and Madison (WI), represent a variety of businesses including restaurants, a bakery, a bridal wear company and a dentist, in a variety of states. All of the law firms are listed as co-counsel on each of the suits. The suits make similar allegations and hold that none of the policies have "any exclusion for losses caused by viruses or communicable diseases."

Simkiss & Block will continue to follow these developments and keep you updated. Follow us on LinkedIn or our website for the most up to date information.