

ALERTS

COVID-19 Business Interruption Insurance Litigation Proliferates

Tony Lathrop
MVA COVID-19 Resource Center
05.2020

A few weeks ago we were discussing what was believed to be the first COVID-19 lawsuit related to business interruption insurance and a handful of state legislative efforts to redefine the scope of coverage for businesses impacted by COVID-19. Now, dozens of lawsuits have been filed across the nation, including several class actions, and legislation is circulating at the federal (and international) level proposing to provide a backstop to private insurers who pay out to policy holders. The impact of COVID-19 shutdowns on businesses is being felt wide and deep. The Risk & Insurance Management Society (RIMS) recently reported to Congress that more than 66% of its members will have business interruption losses due to COVID-19, with 77% expecting losses over \$1 million and 36% expecting \$25 million+ in losses. We hit the highlights of litigation developments related to business interruption insurance below. We discuss noteworthy legislative developments in a separate post.

Litigation Landscape. In the last few weeks, dozens of additional lawsuits have been filed in state and federal courts by companies in a broad range of industries seeking coverage for COVID-19 related business losses under their existing policies. Plaintiffs now include restaurants, service industry businesses, human rights organizations, healthcare companies, and more. And they have sued their insurance companies and brokers in a proliferation of both individual and class actions lawsuits. Law360 recently reported that in one week in April “companies based in nine different states filed a dozen new proposed class action complaints.” Some plaintiffs allege not only breach of contract, but also breach of the covenant of good faith and fair dealing and unfair business practices, and some seek coverage of their business losses and punitive damages and interest.

The policies at issue in the cases present a variety of provisions and exclusions for analysis. Plaintiffs are relying upon business interruption and civil authority provisions, some of which contain specific exclusions for losses due to a virus or bacteria, while some make no specific reference to viruses or communicable diseases at all. Some companies paid for higher-priced all-risk policies that are supposed to provide coverage for all risks of loss that are not specifically excluded in the policy. And others purchased the business interruption coverage as recently as March 2020, in the midst of the COVID-19 pandemic, and there is no exclusion for viral or other pandemics. To varying degrees, the insurers in these cases rely upon policy exclusions to support their denials of coverage and/or most have argued that the coronavirus does not cause “physical damage” that triggers business interruption or civil authority coverage. And to flip the script, Travelers Casualty Insurance Co. of America has filed for a declaratory judgment that its policies do not require the company to provide coverage.

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Although it is not the typical case, one that will be interesting to watch is *SCGM Inc. v. Certain Underwriters at Lloyd's*, Case 4:20-cv-01199 (S.D. Tex.). The policy at issue explicitly provides coverage for losses related to 25 diseases under a pandemic event endorsement, including SARS, which is caused by another coronavirus, SARS-CoV. The endorsement covers the 25 diseases and their mutations and variations. The insurer has denied coverage because the policy does not include COVID-19 caused by the novel coronavirus, SARS-CoV2. Plaintiff has taken the position that COVID-19 is caused by a variation of the virus that causes SARS and is therefore covered under the policy.

Litigation of these coverage denials will no doubt continue. It will be remarkable if state and federal legislative efforts can effectively address or eliminate areas of contention between policyholders and insurers. Read more in our latest legislative update.