

Insights on the First COVID-19 Coverage Lawsuits

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As the number of filings of COVID-19 coverage actions continue to increase, we thought it would be useful to review these cases for our insurer readership so they can better understand the issues and themes that are emerging from the various allegations and requests for relief.

To our knowledge, eight COVID-19 coverage actions have been filed in six different states: Louisiana, Texas, Illinois, Oklahoma, California, and Florida. Coverage is sought for business income losses under property insurance forms, some of which allegedly provide Business Interruption, Interruption by Civil Authority, Limitations of Ingress/Egress, and Extra Expense coverages. We provide links to the complaints in each action at the end of this article.[\[i\]](#)

Two of the eight actions were filed in federal court, while the remaining six were filed in state courts. *Billy Goat Tavern*, filed in federal district court in Illinois by a local restaurant chain, also seeks relief on behalf of a proposed class of all Illinois businesses offering food or beverage for on-premises consumption that were insured by the same insurer under the same all-risk form and were denied coverage for their COVID-19 related business loss claim.

The plaintiffs in six of the pending actions are restaurants/bars. One of those six lawsuits was also filed on behalf of theater owners. The two Oklahoma lawsuits were brought by Native American Tribe Nations for losses sustained by “multiple commercial businesses and services.” In both of those complaints, the Nations seek to preempt any attempt to remove the lawsuits to federal court, stating that they “expressly disavow[] any federal claim or question as being part” of their lawsuits, and that the “claims are based in contract and insurance laws under Oklahoma law.”

Six of the complaints alleged that various governmental orders impacted their businesses. One of those seems to be seeking coverage for COVID-19 related losses incurred both prior to and after the issuance of the relevant government order.

Several of the complaints contain no allegations that the insureds tendered claims to their insurers in advance of filing their lawsuits. In other cases, the carriers’ denials of tendered claims have given rise to statutory and

common law bad faith allegations. For example, in *Big Onion*, the plaintiffs alleged that the insurer “issued blanket denials to Plaintiffs for any losses related to Closure Orders –often within hours of receiving Plaintiffs’ claims— without first conducting any meaningful coverage investigation, let alone a ‘reasonable investigation based on all available information’ as required by Illinois law.” The *Big Onion* plaintiffs also cited a memorandum from the CEO of the insurer that had been circulated to its “agency partners” prior to some of the claims being tendered, “acknowledging that states, such as Illinois, had ‘taken steps to limit operations of certain businesses,’ but prospectively concluding that [the insurer’s] policies would likely not provide coverage for losses due to a ‘governmental imposed shutdown due to COVID-19 (coronavirus).’”

In *Hair Goals Club*, the plaintiff alleged that the insurer’s claim denial violated Texas Insurance Code section 541.061, Misrepresentation of Insurance Policy, as well as other Insurance Code sections concerning the Prompt Payment of Claims. The plaintiff also asserted a claim for breach of the common law duty of good faith and fair dealing, and alleged that the insurer’s acts were done “knowingly,” as that term is defined in the Texas Insurance Code. In addition to seeking coverage for losses under the policy, the plaintiff seeks attorney’s fees and interest, calculated at the statutory amount of 18% per annum. The plaintiff also asked the court to order production of the insurer’s claim file and communication with agents, adjusters, and other concerning the claim.

In some lawsuits, the plaintiffs seem to allege that the absence of an exclusion for a particular cause of loss means that the loss is covered. In *Cajun Conti*, for example, the plaintiffs seek a declaration that “because the policy provided by Lloyd’s does not contain an exclusion for a viral pandemic, the policy provides coverage to plaintiffs for any future civil authority shutdowns of restaurants in the New Orleans area due to physical loss from Coronavirus contamination.” In *French Laundry*, the plaintiffs ask the court to declare that the relevant governmental order “triggers coverage because the policy does not include an exclusion for a viral pandemic and actually extends coverage for loss or damage due to virus.” See also *Prime Time* (“Loss of business Income and operating expenses is specifically covered under the policy, and governmental suspension as a result of COVID-19 is not specifically excluded.”)

None of the plaintiffs seems to allege that insured premises have been contaminated by COVID-19. The plaintiffs in *Cajun Conti*, however, have asked for a declaration that “the policy provides business income coverage in the event that the coronavirus has contaminated the insured premises,” and the plaintiffs in *Big Onion* alleged that the insurer’s “conclusory” statement in its denial letter that the actual or alleged presence of the coronavirus does not constitute direct physical loss “is contrary to the law in Illinois.” The plaintiff stated that “Illinois courts have consistently held that the presence of a dangerous substance in a property constitutes ‘physical loss or damage.’” In *French Laundry*, the plaintiffs alleged that COVID-19 “is physically impacting public and private property, and physical spaces in cities around the world and in the United States. Any effort by [the insurers] to deny the reality that the virus causes physical loss or damage would constitute a false and potentially fraudulent misrepresentation that could endanger policyholders and the public.”

Barbara Lane Snowden DBA Hair Goals Club v. Twin Cities Fire Ins. Co.

French Laundry Partners v. Hartford Fire Ins. Co.

Cajun Conti LLC v. Certain Underwriters at Lloyd's of London

Onion Tavern Group, LLC, et al. v. Society Insurance, Inc.,

Chicsaw Nation Department of Commerce v. Lexington Insurance Company, et. al

Choctaw Nation of Oklahoma v. Lexington Insurance Company, et. al

Billy Goat Tavern v. Society Insurance

Prime Time Sports Bar v. Certain Underwriters at Lloyd's London

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