



Alerts

Chicago-Area Restaurants Seek Insurance Coverage for COVID-19 Business Interruption Losses in Illinois Federal Court

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Insights for Insurers

Restaurants are among the leading wave of business owners filing COVID-19-related business interruption coverage actions. Illinois is now the venue of one such suit.

On March 27, 2020, a group of owners and operators of multiple Chicago-area restaurants and theaters filed suit for declaratory judgment, breach of contract, and statutory bad faith based upon the alleged wrongful denial of COVID-19 coronavirus business interruption claims. [*Onion Tavern Group, LLC, et al. v. Society Insurance, Inc.*, No. 1:20-cv-02005 \(N.D. Ill. March 27, 2020\)](#).

Plaintiffs alleged that they "have been forced, by recent orders issued by the State of Illinois, to cease their operations—through no fault of their own—as part of the State's efforts to slow the spread of the COVID-19 global pandemic." They cited the Illinois Governor's March 15, 2020 order closing all restaurants, bars, and movie theaters to the public. They also cited the Governor's March 20, 2020 order closing all nonessential businesses.

Plaintiffs allege that Society Insurance, Inc., failed to honor its obligations under commercial businessowners insurance policies that included business interruption coverage for losses incurred due to the "necessary suspension" of their operations, including when their businesses are forced to close due to a government order.

Plaintiffs allege that Society issued blanket denials of coverage for any losses related to the government orders within hours of receiving plaintiffs' claims and without first conducting a meaningful investigation. Notably, plaintiffs assert that Society circulated a memorandum to its "agency partners," before plaintiffs even submitted their claims to Society, which concluded that its policies "would likely not provide coverage for losses due to a 'governmental imposed shutdown' due to COVID-19."

The "all risk" policies require direct physical injury. Plaintiffs contend that there was direct physical injury. They cite *Board of Educ. v. International Ins. Co.*, 720 N.E.2d 622 (Ill. App. Ct. 1999), an asbestos fiber in school decision, as establishing that Illinois courts "have consistently held that the presence of a dangerous substance in a property constitutes 'physical loss or damage.'"

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Plaintiffs point out that the Society policies do not contain a "virus exclusion," leading them to expect that the insurance they purchased from Society included coverage for property damage and business interruption losses caused by viruses like COVID-19. Plaintiffs claim that the availability of a virus exclusion demonstrates the existence of coverage under their policies, as does Society's decision not to include the exclusion. They accuse Society of improperly attempting to limit its exposure through the erroneous assertion that the presence of the coronavirus does constitute physical loss.

Plaintiffs seek a declaratory judgment and breach of contract damages. They also seek statutory penalties under the Illinois Insurance Code, 215 ILCS 5/155, based on Society's alleged coverage disclaimers without conducting reasonable investigations based on all available information.

See also [*Cajun Conti LLC v. Certain Underwriters at Lloyd's of London*](#) and [*French Laundry Partners v. Hartford Fire Ins. Co.*](#)

In a recently filed COVID-19 coverage action in Texas, the insured asserted claims for violation of the Texas Insurance Code and bad faith against its insurer following denial of its coronavirus business interruption claim. See [*Barbara Lane Snowden DBA Hair Goals Club v. Twin Cities Fire Ins. Co.*](#)