



Alerts

Additional Insights for Insurers From New COVID-19 Coverage Suits

April 9, 2020

Insights for Insurers

Since our [prior post](#) from last week, additional COVID-19 coverage lawsuits have been filed throughout the United States, and themes and insights concerning theories of coverage continue to emerge.

At least four new coverage actions have now been commenced in [Indiana](#), [Florida](#), [Texas](#), and [Illinois](#). The Indiana and Florida suits were filed in state court, while the Texas and Illinois cases were filed in federal district courts. The policyholders seek coverage for business losses under policies providing business interruption, business income, extra expense, civil authority, and/or ingress/egress coverage. Statutory or common law bad faith claims were made in three of the four lawsuits.

In all four cases, the insured provided notice of a claim to the insurer. Two of those claims were denied. In one case, the carrier responded that it was investigating the claim under a full reservation of rights. In another case, the carrier had not denied the claim prior to the filing of the lawsuit.

As in earlier complaints, the insureds in three of the new actions appear to contend that the absence of a virus exclusion means that the claims are covered. In the *SCGM* matter, the insureds seek coverage under a Pandemic Event Endorsement, which is triggered by the occurrence of certain enumerated diseases. Although the insurer did not deny the insured's claim, the insured filed suit and asserted a claim for "Breach of Contract-Anticipatory Breach/Repudiation" based on a statement by an alleged "agent" of the insurer to the insured's broker, stating that COVID-19 is not a named disease on the endorsement. The insured also asserted a common law bad faith claim, based on an alleged "internal, high-level directive to automatically deny all pandemic-related business interruption claims," as well as a claim for "Gross Negligence and/or Malice."

In *Mace Marine*, the insured asked the court to rule that COVID-19 contamination constitutes direct physical loss or damage to property, and asserted a bad faith claim based on the insurer's alleged "general business practice of willful, wanton, immoral, unlawful, malicious and/or deceptive claims handling practices." In *Sandy Point Dental*, the insured based a statutory bad faith claim on allegations that the carrier denied coverage without conducting a reasonable investigation and failed to provide reasonable and accurate explanations for the denial of the claim.

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In addition, what may have been the first COVID-19 [wrongful death lawsuit](#) was filed in Illinois state court on April 6 by the estate of a Walmart employee who died from coronavirus. Walmart Inc. and the owner of the shopping center where the store was located were named as defendants. The plaintiff asserted claims for negligence and willful and wanton misconduct based on, among other things, the alleged failure to cleanse and sterilize the store, failure to implement, promote, and enforce social distancing guidelines, and failure to provide the decedent with personal protective equipment.

See also, [Insights on the First COVID-19 Coverage Lawsuits](#), April 4, 2020.