



Alerts

Virus Exclusions Are Not Preventing Some Policyholders from Filing COVID-19 Coverage Lawsuits

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Insights for Insurers

A steady stream of COVID-19-related insurance coverage matters continues to be filed in state and federal courts across the United States. As we have previously discussed in an [April 4 update](#) and an [April 9 update](#), interesting trends have begun to emerge from these lawsuits. Some additional theories and claims have been raised in some of the newly filed complaints that insurers should keep an eye on, including attempts to avoid application of the virus exclusion.

In [one new action](#), an insured restaurant has asked a federal district court in Pennsylvania to rule that the policy's virus exclusion does not apply to its claim. The insured is seeking recovery for losses sustained following governmental orders pursuant to coverage for the loss of business income and extra expenses incurred when access to the insured property is prohibited by order of civil authority as the direct result of a covered cause of loss to property in the immediate area of the insured's property.

The insured alleges that restaurants such as itself "are more susceptible to being or becoming contaminated, as both respiratory droplets and fomites are more likely to be retained on the Insured Property and remain viable for far longer as compared to a facility with open-air ventilation," the insured's business is "highly susceptible to rapid person-to-property transmission of the virus, and vice-versa, because the service nature of the business places staff and customers in close proximity to the property and to one another," and the virus is "physically impacting" the insured restaurant. As we've seen in earlier COVID-19 lawsuits, the insured further allege that "[a]ny effort by the [insurer] to deny the reality that the virus causes physical loss and damage would constitute a false and potentially fraudulent misrepresentation that could endanger the Plaintiff and the public."

With regard to the Exclusion of Loss Due to Virus or Bacteria, the insured seems to allege that the exclusion does not apply on the basis that the losses were caused by the governmental orders. Similar to a number of earlier COVID-19 lawsuits, there is no indication that the insured tendered the claim to its insurer or that the claim was denied prior to the filing of the coverage action.

In [another newly filed action](#) in the District of Columbia, the policy issued to the insured bar/restaurant excluded coverage for "loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease." The insured alleged,

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however, that its loss of business income "was not 'caused by or resulting from' a virus as its loss occurred as a result of the Mayor's Order."

We will continue to monitor and report on developments in this rapidly evolving area.