

Court Holds That Insurance Producer Cannot Be Liable for Denial of COVID-19 Business Interruption Claim

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Professional Liability Alert

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After an insurance carrier denied a lawyer and her law firm's claim for lost business income due to the COVID-19-related shutdown, she sued both her carrier and the insurance producer that procured the policy. *See Wilson v. Hartford Casualty Company*, No. 20-3384 (E.D.Pa. Sep. 30, 2020). In one of the first cases to consider producer liability in COVID-19 cases, Judge Eduardo Robreno dismissed the lawsuit against the producer and the carrier.

USI procured the Policy from Hartford for Rhonda Hill Wilson and her law firm. The Policy included coverage for lost business income and extra expense caused by direct physical loss of, or damage to property. Similarly, the Policy covered lost business income if a nearby property experienced a direct physical loss that caused a civil authority to issue an order that prohibited access to the law firm's property. The Policy also included a virus exclusion "for loss or damage caused directly or indirectly by . . . [p]resence, growth, proliferation, spread or any activity of . . . virus."

Judge Robreno did not decide whether the Policy afforded any coverage to Wilson and her law firm for their COVID-19 losses. Rather, he found that even if they could, the virus exclusion unambiguously barred any coverage they could possibly claim. For that reason, Judge Robreno dismissed the claims against Hartford.

As to USI, Wilson and her law firm alleged that it acted as Hartford's agent. Judge Robreno found that this argument would "stand agency theory on its head," since they seek to hold the agent, USI, liable for the coverage denial made by the principal, Hartford. Nonetheless, even if Wilson made a viable agency argument, USI would still not be liable because Hartford's coverage determination was correct.

Judge Robreno also recognized that while USI helped procure the Policy, it was not a party to the Policy. Beyond Wilson's agency argument, she and her law firm alleged no independent basis to establish liability against USI. For these reasons, Judge Robreno dismissed the claims pleaded against USI.

Christopher Leise and Marc Penchansky represented USI. To read more about the potential for broker/agent liability, please read Broker Liability in the Wake of COVID-19 Coverage Litigation.

If you have questions or would like further information, please contact Christopher P. Leise (leisec@whiteandwilliams.com; 856.317.3646) or Marc L. Penchansky (penchanskym@whiteandwilliams.com; 215.864.6279).

As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

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