

Illinois Insureds are Contesting One Carrier's Universal Denial to Covid-19 Losses

In response to the large number of COVID-19-related losses that businesses are experiencing, insurers have begun issuing statements informing their insureds of whether their policies will respond to the losses, and if so, what coverage will be afforded. Insurers cannot take a "one-size-fits-all" approach to the COVID-19 losses because, besides factual differences, the losses are occurring within all fifty states which means 50 different state law interpretations will apply.

Recently, on March 27, 2020, a number of restaurants and movie theaters located in and around Chicago (the "Insureds") filed a declaratory judgment action, titled Big Onion Tavern Group, LLC et al. v. Society Insurance, Inc., against their property insurance carrier, Society Insurance, Inc. ("Society"), seeking coverage for business interruption resulting from the shutdown order issued by the governor of Illinois. The suit alleges that Society improperly denied their business interruption claims by using a boiler plate denial. The denial issued by Society is allegedly used for all COVID-19 losses regardless of the applicable jurisdiction's interpretation of the policy language and the specific coverage purchased by the insured. Further, in its denial, Society takes the position that any loss related to a government-issued closure order is uncovered, even though the Insureds specifically purchased business interruption coverage and their policies did not contain an exclusion for losses caused by viruses.

As the threat of COVID-19 continued to rise during the month of March, governors across the country started issuing state-mandated closures. Governor Pritzker of Illinois issued his first order on March 15, 2020, calling for the shutdown of all restaurants, bars, and movie theaters. Subsequently, on March 20, 2020, he issued a second order which instructed all "non-essential businesses" to close. As a result of both orders, the Insureds suffered a loss of revenues and were forced to either lay-off or furlough a majority of their employees.

Quickly after the shutdown went into effect, the Insureds filed claims and received "blanket denials" from Society stating that losses related to the governor's closure orders were not covered. The denials were issued within hours of receiving the notice of the losses, meaning the Insurer did not conduct "any meaningful coverage investigation, let alone a 'reasonable investigation based on all available information' as required under Illinois law" prior to issuing the denial. Additionally, Society's CEO issued a statement on March 16, 2020 that losses because of government-mandated closures, like the ones issued by Governor Pritzker, were "likely not to provide coverage."

The Insureds rely upon favorable Illinois case law which states the "presence of a dangerous substance in a property constitutes 'physical loss or damage.'"¹ Additionally, the Insureds allege

¹Bd. of Educ. of Twp. High Sch. Dist. No. 211 v. Int'l Ins. Co., 720 N.E.2d 622, 625-26 (Ill. Ct. App. 1999).

that they may not even need to prove that an insured location sustained physical loss or damage because the policies include civil authority coverage which provides coverage for losses because of prohibited access to the Insureds' locations resulting from a government action in a response to "dangerous physical conditions." The civil authority coverage only requires damage to property *other than* property at the Insureds' premises.

The Insureds are also seeking damages for statutory bad faith.

This is just one of a number of DJs already filed in response to insurers' denials of COVID-19- related losses. The losses will pose complex insurance questions, some of which may have very little, if any, prior case law to rely on. SDV will continue to monitor the DJs filed and the courts' decisions to keep insureds up to date on the case law affecting their COVID-19 losses.

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