

Lawsuit Seeking Business Interruption and Civil Authority Coverage for Coronavirus Losses Calls on Court to Disregard Virus Exclusion Based on Pending Legislation

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On Friday, a New Jersey restaurant filed a lawsuit in New Jersey state court against Liberty Mutual Insurance Company seeking a declaratory judgment that it is entitled to insurance coverage for losses relating to the coronavirus. (Grand Cru, LLC d/b/a Restaurant Nicholas v. Liberty Mutual Ins. Co., Docket No. MON-L-001122-20).

Restaurant Nicholas seeks coverage under policy provisions for business interruption and under a civil authority provision that covers losses sustained when a civil order prevents access to insured premises. Last month, New Jersey Governor Phil Murphy issued [Executive Order No. 107](#) that, as of March 21, [forbids sit-down dining and restricts restaurants to curbside pickup and delivery](#). Restaurant Nicholas alleges that, although the coronavirus is not physically on its premises, coverage exists because the virus has caused physical loss and damage elsewhere and public access to the restaurant is barred as a result of the executive order.

The action is among the first of what is likely to be a cascade of lawsuits seeking insurance coverage for coronavirus-related losses. In the wake of government closure orders, similar lawsuits have already been filed by businesses in California, Florida, Illinois, Louisiana, and Texas.

The lawsuit in New Jersey is particularly notable for the fact that the Liberty Mutual policy, which was not attached to the complaint, apparently contained an exclusion for losses arising out of any virus. The complaint asserts that the exclusion “is of no force and effect with respect to the Policy because it violates New Jersey public policy as referenced in New Jersey Assembly Bill No. 3844 introduced on March 16, 2020”

Assembly Bill No. 3844 would require insurers provide coverage to policyholders that sustain losses due to business interruption caused by the coronavirus, subject to a state program to reimburse those insurers. Similar legislation has been introduced in other states, including Massachusetts, New York, and Ohio. Any such legislation would need to withstand a challenge under the Contracts Clause of the U.S. Constitution.

In any case, the assertion by Restaurant Nicholas that yet-to-be-enacted legislation can nullify a policy exclusion seems dubious at best.

Saiber is counseling its insurer clients concerning coronavirus-related claims and is preparing to litigate coverage issues arising out of the coronavirus. As part of this process, we are actively monitoring recently-filed lawsuits and pending legislation.