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BLOGS

COVID-19 Business Interruption

The Bumpy Ride to COVID-19 Multidistrict Litigation

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To date there have been approximately 100 federal lawsuits and 350 state lawsuits filed against insurers by policyholders seeking coverage for their business interruption losses. Two sets of plaintiffs in the federal cases have asked the Judicial Panel on Multidistrict Litigation (MDL) to order all pandemic-related coverage litigation transferred to either a federal court in Pennsylvania or Illinois where it could all be heard by the same judge as part of a single Multidistrict Litigation matter.

Oral arguments on that motion to transfer were held on July 30, and based on the comments by the panel members and counsel, it is certainly not clear whether an MDL will be ordered. On the one hand, each coverage case arguably presents different facts, different questions of different states' laws, different defendants, and sometimes slightly different policy wording, but on the other hand, a single issue – whether the virus has caused physical loss or damage to property – permeates every case. When asked by U.S. District Judge R. David Proctor "how in the world is one judge going to get through all this with any type of efficiency," one policyholder counsel explained that available case "management tools" would be effective, but supported the idea that perhaps multiple MDLs would be in order. Insurance industry counsel confirmed the industry's opposition to centralization and consolidation, and found a strange bedfellow in other policyholder counsel who argued that "our nation's decentralized response to COVID-19, the pandemic's uneven impact on businesses in different parts of the country and in various stages of reopening, and the differences between the types of businesses making claims and the thousands of different policies at issue illustrates why an MDL makes absolutely no sense here."

On balance, it appears that there are more voices opposed to an MDL for coronavirus-related business interruption coverage litigation than in favor of it. It remains to be seen how the panel will rule, but either way, my advice to policyholders is the same: Fasten your seat belts, folks; it's going to be a bumpy ride.