COVID-19 Coverage Update

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The e-POST

Direct Physical Loss – Northern District of Georgia (Georgia Law)

Henry's Louisiana Grill Inc. v. Allied Ins. Co. of America
1:20-CV-2939-TWT, 2020 WL 5938755 (N.D. Ga. Oct. 6, 2020)

The U.S. District Court for the Northern District of Georgia held that an Atlanta restaurant, Henry's Louisiana Grill (Henry's), is not entitled to insurance coverage from Allied Insurance Company of America (Allied) for its business losses stemming from the COVID-19 pandemic. Henry's brought suit against Allied for coverage under its policy's Business Income and Civil Authorities coverages. Additionally, Henry's argued that the policy's Virus or Bacteria Exclusion was inapplicable because Henry's closed its dining rooms in response to the Georgia Governor's Public Health State of Emergency executive order, not because of the virus. In its suit, Henry's argued that the executive order caused its dining rooms to be designated as "unsatisfactory," which equated to a direct physical loss of its main source of revenue. It further argued that the Civil Authorities coverage applied, which covers business losses "caused by action of civil authority that prohibits access to the described premises. …"

Allied argued that Henry's suspension of its dining room operations in response to the executive order was not a covered loss under the policy. Further, Allied explained that the Virus or Bacteria Exclusion applied to preclude coverage for "loss or damage caused directly or indirectly by … [a]ny virus … that induces or is capable of inducing physical distress, illness, or disease."

The trial court judge found Henry's arguments unavailing, determining that no physical change or physical loss of the dining rooms occurred. The judge also ruled that Henry's had not pleaded facts sufficient to recover under the Civil Authorities coverage. In holding that Henry's failed to state a claim for coverage, the court noted that the decision "merely reflects the plain language of the parties' insurance contract" and "is not a judgment on the Plaintiffs' business sense or the wisdom of shuttering dining rooms in the face of a global pandemic."

Business Interruption Coverage – Middle District of Florida (Florida Law)

Harvest Moon Distributors LLC v. S.-Owners Ins. Co.
--- F. Supp. 3d ---, 2020 WL 6018918 (M.D. Fla. Oct. 9, 2020)

The U.S. District Court for the Middle District of Florida dismissed a lawsuit against Southern-Owners Insurance Company (Southern-Owners) seeking business interruption insurance coverage for losses related to an insured's inability to supply product because of COVID-19. Southern-Owners had issued an insurance policy to Harvest Moon Distributors LLC (Harvest Moon) providing, *inter alia*, property, business interruption and accounts receivable coverage.

Harvest Moon, a beer and wine distributor, had a contract with Walt Disney Parks and Resorts US Inc. (Disney) to supply, among other things, South African beer. At some point prior to March 15, 2020, Harvest Moon purchased beer to supply to Disney. On March 15, 2020, before Harvest Moon shipped the beer, Disney voluntarily closed to the public due to the COVID-19 pandemic. Harvest Moon submitted a claim to Southern-Owners for loss of business income, extra expense, inventory, and accounts receivable. The claim was denied. Harvest Moon then filed suit against Southern-Owners.

The court granted Southern-Owners' motion to dismiss Harvest Moon's complaint, finding that the closure of Disney's park did not give rise to coverage under its policy's business income coverage. The court found that Harvest Moon had alleged direct physical loss of or damage to covered property due to the spoliation of the beer. However, Harvest Moon had not properly alleged that it was entitled to coverage for loss of business income because it did not allege that it suspended its "operations" or underwent any "period of restoration" as required by the business income coverage. The court concluded that it could not "infer from the mere assertion that Plaintiff's product spoiled that Plaintiff's operations were suspended." The court also rejected Harvest Moon's claim for coverage under the Accounts Receivable endorsement because "[a]lthough Plaintiff alleged that its beer spoiled, it did not allege any damage to its records of accounts receivable."

Finally, the court found that Harvest Moon had not properly alleged that the spoliation of the beer was a covered cause of loss as defined in the Southern-Owners' policy. "Although the Policy does not explicitly exclude pandemic-related losses, Plaintiff's loss arose from Disney's act of refusing the beer, not from the pandemic. COVID-19 itself did not damage Plaintiff's beer. In other words, Plaintiff's beer would not have been damaged or destroyed but for Disney's decision, making Disney the cause of the alleged spoliation. It was this business decision, not COVID-19, that caused the loss and such decisions are expressly excluded from coverage. Furthermore, "the Complaint itself states that Plaintiff experienced 'loss of use' of its product, which the Policy expressly excludes from coverage. As a result, the court granted Southern-Owners' motion to dismiss.

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