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More Hope for Insureds Experiencing COVID-19 Losses

Litigation

Insurance Counseling & Recovery

As we wrote about in [a recent article](#), the trends in insurance coverage for COVID-19 related losses are: 1) so far insurers are winning, and 2) the cases are fact intensive and turn on policy and pleading language. As we noted, a judge in Missouri had recently ruled in two different cases to deny the insurers' motions to dismiss on the basis that a policy that does not define "physical loss" or "physical damage" might cover the presence of a virus that "attaches" to the property and deprives the policyholder of its use. See *Blue Springs Dental Care LLC et al v. Owners Insurance Co.* (W.D. Mo. Sep. 21, 2020) and *Studio 417 Inc. et al. v. Cincinnati Insurance Co.* (W.D. Mo. August 12, 2020).

Just last week, a New Jersey state court rejected an insurer's claim that COVID-related losses cannot qualify as covered losses, in *Optical Services USA/JCI v. Franklin Mutual Insurance Co.*, No. BER-L-3681-20. In that case, the insured claimants asserted that their businesses were protected from loss under their business interruption policies because COVID had created an "unanticipated crisis" that caused loss of business when New Jersey's governor issued executive orders requiring nonessential businesses to close and residents to stay home. The claimants argued to the court that they closed their businesses in compliance with the governor's orders, which constituted an "unanticipated crisis" under the policy language and thereby suffered financial losses. The court denied the insurers' motion to dismiss, thus allowing the case to move forward. The facts and policy language in this case were different from those in the Missouri cases and the New Jersey judge did not rely on the Missouri cases in rendering his decision. Thus, again, each policy, each set of circumstances, each state may be different and we encourage our clients to examine their policies for possible coverage.