



No Coverage for Georgia Restaurants' COVID-19 Business Income Losses

Henry's Louisiana Grill, Inc. v. Allied Insurance Co. of America, Civil Action File No. 1:20-cv-2939-TWT, U.S. District Court for the Northern District of Georgia (Oct. 6, 2020).

On Oct. 6, 2020, the Northern District of Georgia's Judge Thrash held that an insurer was not obligated to cover losses two Georgia eateries sustained when they shuttered their dining rooms during the COVID-19 pandemic. The opinion is the first of its kind from any court in Georgia.

Plaintiff insureds sued Allied Insurance Company of America for breach of contract and declaratory judgment after Allied denied coverage for business income losses plaintiffs suffered when they closed dining rooms in response to Governor Kemp's executive order declaring a state of emergency due to COVID-19.

Plaintiffs' policy with Allied provided business income coverage for losses during suspension of operations caused by "*direct physical loss of or damage to*" their property. The policy also provided civil authority coverage for losses incurred when a property other than plaintiffs' is damaged by a covered cause and an action by a "civil authority" prohibits access to plaintiffs' premises, provided certain conditions are met.

The court found that under the business income provision, there was no "*direct physical loss or damage to*" the physical property as required to trigger coverage. The court emphasized that a contrary ruling would put insurers on the hook whenever any regulation or executive order produced negative effects in business operations — massively expanding the scope of coverage.

The court also found no coverage under the civil authority provision of the policy because plaintiffs had failed to plead that specific conditions had been met to trigger coverage. Among other things, plaintiffs failed to plead that a civil authority's action actually prohibited access to the premises and did not identify any particular property around the premises that was damaged.

Finally, because the court found that no coverage existed under the policy under the facts alleged, the court did not consider Allied's argument that the policy's virus and bacteria exclusion barred coverage.

Practice Note: Judge Thrash distinguished the case from several similar cases that a federal judge in Missouri has refused to dismiss, pointing out that in each of those cases, the insureds alleged COVID-19 was present on their premises and the virus caused the physical damage, whereas in this case, the alleged source of physical loss is Governor Kemp's executive order.

If you wish to further discuss the case or have any questions, please contact a Swift, Currie, McGhee & Hiers attorney at 404.874.8800 or via our website, swiftcurrie.com.

The foregoing is not intended to be a comprehensive analysis of the full effect of these changes. Nothing in this notice should be construed as legal advice. This document is intended only to notify our clients and other interested parties about important recent developments. Every effort has been made to ascertain the accuracy of the information contained within this notice.

