

Bad Faith Claims Present Additional Considerations for Insurers Facing COVID-19-Related Losses

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As expected, the unprecedented impact of COVID-19 has resulted in businesses looking to the insurance industry as a means for economic relief. Insurers have faced – and will likely continue to face – a deluge of claims relating to property and business interruption insurance coverage. Disclaimers of coverage for these claims have been primarily due to the lack of direct physical loss, damage, or injury to tangible property. Litigation quickly ensued. While many policyholder lawsuits have focused solely on coverage for their claimed losses, some suits assert claims of bad faith as an additional avenue of relief.

Claims of purported bad faith may include an insurer's failure to adequately investigate in a timely manner, denial of a claim without sufficient investigation, preemptory or blanket denials of all COVID-19 claims without consideration of specific facts of individual claims, inadequate or untimely communications with the policyholder, or misrepresentations of coverage. Bad faith claims present additional questions for an insurer to address. For example, whether the bad faith claim can succeed absent a covered loss is a question with an answer varying among jurisdictions. And what qualifies as a reasonable investigation of a claim resulting from an emerging risk of unparalleled magnitude. Damages recoverable for bad faith claims depend on the applicable law, but can be expected to increase demands and any settlement negotiations.

Examples of bad faith allegations in COVID-19 insurance litigation include the following:

- *Big Onion Tavern Group LLC et al. v. Society Insurance Inc.*, No. 20-cv-2005, 2020 WL 1502819 (N.D. Ill.): complaint filed by a number of Chicago restaurants in the Northern District of Illinois, alleging insurer wrongly issued “blanket denials” for claimed losses without conducting meaningful investigations, with denials appearing to be driven by the insurer’s supposed “desire to preempt its own financial exposure to the economic fallout resulting from the COVID-19 crisis.”

- *Sandy Point Dental PC v. Cincinnati Insurance Co. et al.*, No. 20-cv-2160, 2020 WL 1684205 (N.D. Ill.): complaint filed by dental office alleging insurer “denied the claims without conducting any investigation, let alone a ‘reasonable investigation based on all available information,’” and “fail[ed] to provide reasonable and accurate explanations of the bases in its denials.”
- *Salum Restaurant LTD v The Travelers Indemnity Company*, No. 3:20-cv-01034, 2020 WL 1987241 (N.D. Tex.): restaurant alleges its insurer “summarily denied without any meaningful investigation” its claim and the disclaimer letter inaccurately quoted policy language.

The potential for inconsistent rulings in and among jurisdictions, as well as proposed regulatory or legislative efforts to address insurance coverage claims for COVID-19 losses, will undoubtedly influence the volume and resolution of bad faith claims in the coming year. Trends and novel arguments continue to develop in this area of law. For updates, be sure to subscribe to Sandberg Phoenix’s Bad Faith Blog.