

Micah Skidmore Talks With Insurance Coverage Law Center About Morning Show Lawsuit

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PRACTICES Insurance Recovery, Litigation, Climate Change and Corporate Sustainability, Securities and Shareholder Litigation

Haynes Boone Partner [Micah Skidmore](#) commented in an *Insurance Coverage Law Center* article about TV show “The Morning Show’s” COVID-19-related business interruption lawsuit against a Chubb Ltd. Unit, claiming breach of contract and bad faith.

Below is an excerpt:

...The suit charges that Chubb National Insurance Co. refused to pay its business interruption claim in connection with COVID-19-related shutdowns beginning in March of 2020 because the production company had not suffered “direct or physical loss or damage.” The production company said in the lawsuit that the policy provided \$125 million in cast coverage and \$1 million each for imminent peril, civil or military authority, and ingress and egress coverages. The policy did not contain a virus exclusion....

Micah E. Skidmore, a partner in Haynes Boone’s Insurance Recovery Practice Group, provided the following commentary on the case.

Since early 2020, thousands of lawsuits have been filed by policyholders seeking to recover a variety of business losses arising out of the COVID-19 pandemic. Most of these suits have been brought under commercial property insurance policies offering business interruption coverage in the event of “physical loss or damage” to covered property. With some notable exceptions, the majority of federal courts hearing such cases have granted insurers’ motions to dismiss on the grounds that (1) state, county and other governmental lockdown and quarantine orders suspending non-essential business operations; and (2) the actual or potential contamination of insured premises with the SARS-CoV-2 virus do not qualify as “physical loss or damage” as required to trigger the operative coverage. State courts have proven to be more receptive to policyholders’ allegations substantiating “physical loss or damage,” and as more cases work their way through the appellate courts, an increasing number of policyholders have urged certification to state supreme courts for guidance on the controlling issue of the meaning of “physical loss” under state law.

The Always Smiling case is unique because the operative Cast coverage does not require “direct physical loss or damage” to property. Instead, Chubb’s Cast coverage insures “the actual production loss you [Always Smiling] incur due to the inability of an essential element or other declared person to commence, continue or complete their duties or performances in an insured production as a result of a covered cause of loss of such essential element or other declared person.” For purposes of this coverage, a “covered cause of loss “includes “death, injury, sickness, kidnap or compulsion by physical force or threat of force.” Chubb refused to acknowledge Always Smiling’s claim under the Policy’s Cast coverage on the grounds that “there were no reported cases of ‘death, injury, sickness, kidnap, or compulsion by physical force or threat of physical force.’” Setting aside the fact that the Policy’s terms do not expressly require an actual sickness as opposed to a potential sickness in any declared person, Chubb’s position ignores the fact that

production losses were compelled by the “threat of force” posed by COVID-19 to any and all declared persons, had production continued in spite of the pandemic and in spite of the civil authority orders Chubb has otherwise acknowledged as offering limited coverage under the circumstances. See, e.g., *Mudpie, Inc. v. Travelers Cas. Ins. Co.*, 487 F. Supp. 3d 834, 841 (N.D. Cal. 2020) (“Had Mudpie alleged the presence of COVID-19 in its store, the Court’s conclusion about an intervening physical force would be different. SARS-CoV-2 – the coronavirus responsible for the COVID-19 pandemic, which is transmitted either through respiratory droplets or through aerosols which can remain suspended in the air for prolonged periods of time — is no less a “physical force “than the “accumulation of gasoline” in *Western Fire* or the “ammonia release [which] physically transformed the air” in *Gregory Packaging*.” (emphasis added)). Given the policy terms and the reality of COVID-19’s physical threat, not only to property but to all declared persons, Chubb’s wrongheaded position should be rejected. If the district court agrees, this case could provide welcome precedent for other media and entertainment companies seeking coverage under policies with similar terms.

To read the full article, click [here](#).