

Insurance Recovery - Year In Review 2022

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PRACTICES Insurance Recovery, Litigation

In some ways, 2022 marked a return to the relative normalcy of post-pandemic life. In other respects, 2022 will be remembered for its dramatic turn of events, including the war in Ukraine, surging inflation, and the overturning of *Roe v. Wade*. Developments in the world of insurance recovery have been less sensational, but nonetheless important for policyholders and insurers alike. Here is a high-level summary of important legal developments and trends relating to insurance coverage litigation in 2022 with a more detailed synopsis of significant legal decisions below.

- Appellate courts around the country have continued to address business interruption claims arising out of the COVID-19 pandemic, with the majority of reported decisions finding that viral contamination does not constitute “physical loss or damage.”
- In other cases involving first party property coverage, federal circuit and state high courts addressed a range of procedural issues including the appealability of appraisal orders, the impact of external agreements on priority of coverage, and the calculation of depreciation and actual cash value.
- In addition to addressing issues of general applicability such as earth movement exclusions and extrinsic evidence in determining an insurer’s duty to defend, several courts issued opinions relating to common issues involving: (1) the scope of a general liability policy’s coverage for damages “because of” bodily injury; (2) the impact of financial responsibility laws on coverage determinations; and (3) assignment of claims and policy benefits. Other significant coverage decisions issued from the Second Circuit Court of Appeals related to the exhaustion of underlying limits of insurance and the waiver of coverage defenses, resulting from an untimely response to an insured’s claim.
- D&O insurers and policyholders continued to litigate over timing and trigger issues relating to “claims made,” “related claims,” and “prior notice” provisions. Circuit courts of appeals also issued significant opinions relating to the reasonableness of unpaid defense costs and exculpation in bankruptcy reorganization plans.
- In the realm of network security and privacy liability coverage, courts issued significant decisions addressing coverage under general liability policies for a variety of privacy claims, including BIPA and TCPA violations. A district court in Minnesota also issued an important decision addressing the scope of business interruption coverage under a cyber policy.
- Other notable coverage decisions addressed: (1) aviation insurance coverage; (2) the impact of a *nolo contendere* plea on a criminal acts exclusion; and (3) the insurable interest rule for life insurance coverage.

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