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Publication

11/04/2020

Not So Fast – A Pennsylvania Court Opts to Wait Until the Facts Are in Before Issuing a Coverage Ruling in a COVID-19 Business Interruption Case

The COVID-19-related business interruption coverage case of *Taps & Bourbon on Terrace, LLC v. Underwriters at Lloyds London, et al.*, pending in the Philadelphia County Court of Common Pleas, may represent a growing trend all policyholders whose businesses have suffered from the impact of COVID-19 would welcome—the acknowledgement that, as the court stated, “the law and facts are rapidly evolving in the area of COVID-19 related business losses.”^[1] This reality was the engine of the court’s act of denying Lloyd’s preliminary objection to Taps & Bourbon’s complaint seeking coverage for business interruption losses.

Save for the comment noted above, the court’s order provides little insight into its reasoning for denying Lloyd’s motion.^[2] However, Taps & Bourbon had argued in response to Lloyd’s preliminary objection that:

While the complaint did not allege the presence of the coronavirus at the insured premises, Taps & Bourbon argued its policy covered the “risk” created by the coronavirus in addition to the physical loss its presence would entail. Notably, the policy contained a virus exclusion providing that coverage did not exist for losses “caused by or resulting from any virus.”

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While identity of the *evolving facts* of which the Taps & Bourbon court spoke was not provided, the facts regarding the coronavirus and COVID-19 are indeed evolving. For instance, one recent study concluded that, “[w]ith initial viral loads broadly equivalent to the highest titres excreted by infectious patients, **viable virus was isolated for up to 28 days at 20 °C [(68 °F)] from common surfaces such as glass, stainless steel and both paper and polymer banknotes.**”^[4] That is, the coronavirus atoms to which Taps & Bourbon referred can remain, physically, on surfaces for up to 28 days in room temperature.

The denial of Lloyd’s preliminary objection in the Taps & Bourbon case represents a significant victory for policyholders, especially given the fact that the policy in question contained a virus exclusion. The emergence of new information regarding the coronavirus, such as its tendency to persist on surfaces for extended periods of time in certain conditions, should also help policyholders make their cases going forward.

If you have any questions about this recent decision, please contact Angela Elbert, Paul Walker-Bright, Nicholas Graber or your Neal Gerber Eisenberg attorney.

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[1] *Taps & Bourbon on Terrace, LLC v. Underwriters at Lloyds London, et al*, Court of Common Pleas of Philadelphia County, No. 00375 (Oct. 26, 2020).

[2] *See generally id.*

[3] Plaintiff's Memorandum Of Law In Support Of Its Response In Opposition To Defendant, Certain Underwriters At Lloyd's, London's Preliminary Objections To Plaintiff's Amended Complaint, p. 8.

[4] Shane Riddell, Sarah Goldi, Andrew Hill, Debbie Eagles, and Trever W. Drew, *The Effect of Temperature on Persistence of SARS-CoV-2 on Common Surfaces*, *Virology Journal* (2020) 17:145, abstract.