



# COVID-19 Actions & Insurance Implications

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 COVID-19, What the H%?! Do We Do Next?



Thursday, April 23, 2020 (12:30-1:30pm EST)  
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## Recent News

- Travelers sees more rate increases in lines where they feel it is needed [Click Here](#)
- A deal on additional federal funding for the Paycheck Protection Program has been reached. This is expected to include \$250B for the PPP, \$60B for small lenders, \$60B in disaster relief loans, \$75B for hospitals and \$25B for testing. [Click Here](#)
- Kite Realty Group Trust joins other landlords in extending financial assistance to tenants during the COVID-19 crisis [Click Here](#)

## Actions & Analysis – Business Interruption Class Action Lawsuits

- Continue to review changing executive orders regarding which business activities are allowed, and coordinate with tenants potentially returning to business.

As previously noted, various businesses have filed a number of lawsuits against carriers seeking coverage for COVID-19 related business losses. Recently, six class actions lawsuits were filed by a variety of plaintiffs seeking business interruption coverage as a result of COVID-19. Unlike previously suits, these class actions were filed in federal district courts, including the Southern District of New York, which often handles complex financial transactions due to its location and inclusion of a large number of financial firms within its jurisdiction. Two additional class action suits were filed in the state court in Pennsylvania as well.

While insurance law and contract law will remain the general bailiwick of state law, despite the filing in federal courts. Therefore, individual cases will still be based upon interpretation of state law as opposed to having a single nationwide ruling or interpretation of COVID-19 related business interruption claims. However, many federal courts are better able to accommodate the difficulties associated with complex class action litigation. In any event, these class action lawsuits represent an escalation of the already brewing legal battles with carriers.

The suits filed appear to follow the same general pattern of previously filed litigation, namely, that COVID-19 created physical damage to the property, civil authority's decision to close businesses created losses, and no applicable viral or communicable disease exclusions are at issue. The plaintiffs in the cases represent a broad array of businesses, and the class nature of the suit invites the possibility of large-scale settlements between carriers and the insured. Additionally, the filing of two additional suits in Pennsylvania is noteworthy following the ruling in *DeVito v. Wolf* where the Pennsylvania Supreme Court described the COVID-19 pandemic as a "natural disaster." It seems likely that the two Pennsylvanian suits will seek to exploit whatever advantage that ruling may have for business interruption claims. Overall, carriers have maintained their position of honoring the insurance policies as they see them with many, if not most, including a communicable disease exclusion or similar language which precludes coverage under COVID-19. Businesses should remain vigilant regarding the pending suits, especially given their nature as class actions.

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