

All Roads Lead to the JPMDL: Another COVID-19 Business Interruption Declaratory Judgment Is Stayed Pending MDL Decision

JDSupra

Insurers nationwide are awaiting the forthcoming decision of the Judicial Panel on Multidistrict Litigation (JPMDL) on consolidating COVID-19 business interruption coverage lawsuits. In the meantime, some federal courts are staying proceedings, declining to rule on fully-briefed motions and deferring decisions that could bring clarity to insurers and their insureds in individual disputes.

On Wednesday, July 1, for example, the Western District of Washington declined to hear an insurer's fully-briefed motion to dismiss and instead stayed a lawsuit for business interruption coverage brought against Oregon Mutual Insurance Company by its insured, Nue LLC d/b/a Nue Seattle Nue).[1] District Judge Robert Lasnik justified the decision on the basis of judicial economy – specifically, the need to avoid potentially conflicting rulings – and cited an upcoming hearing in the JPMDL regarding consolidation of pretrial proceedings of COVID-19 business interruption coverage lawsuits nationwide.

The Nue decision is one of hundreds of cases (including tag-along cases) that plaintiffs have brought to the JPMDL, seeking consolidation under 28 U.S.C. 1407. A number of interested parties have opposed consolidation, including insurers, insurer groups and United Policyholders, an advocacy group representing insureds. It is rare for United Policyholders to find itself on the same side as carriers, but its counsel filed an amicus brief last month supporting the insurers' position. The brief noted the potential cost, inconvenience and inefficiency of consolidation, and argued that centralized pretrial proceedings were inappropriate because of broad differences in case facts, policy language and applicable state law.

The JPMDL hearing on consolidation is presently scheduled for July 30, 2020. Dozens of attorneys have

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filed notices indicating they intend to present oral argument.

If plaintiffs' petition for consolidation is successful, additional delays in resolution are likely, as a transferee court focuses on organizational, discovery and class certification issues. Industry watchers and litigants alike will be closely monitoring the July 30 hearing.

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