

IN RE: COVID-19 Business Interruption Protection Insurance Litigation

Year: 2020

Court: United States Judicial Panel on Multidistrict Litigation

Case Number: MDL Docket No. 2942

In its brief, UP urged the court against creating the first-ever nationwide insurance coverage MDL, attempting to consolidate all lawsuits seeking coverage for losses related to the COVID-19 pandemic into a single MDL proceeding of staggering scope and breadth. UP argued:

First, while the cases that are the subject of the pending motions generally relate to COVID-19, each involves “different property, different insureds, different witnesses, different proofs of loss, and different damages.”

Second, the actions proposed for consolidation involve property insurance policies that vary widely in their coverages, conditions, endorsements, exclusions, and limitations. These significant variations must be addressed on an individual case and claimant basis.

Third, the insurance policies would need to be construed under the laws of all 50 states, the District of Columbia, Puerto Rico, and our nation’s various territories, each of which has its own insurance laws and rules of insurance policy interpretation, which vary dramatically from jurisdiction to jurisdiction. The MDL judge would not only need to evaluate conflicts of law and make appropriate choices of law on a per-issue basis, but would then need to apply the pertinent jurisdiction’s laws to each underlying claim, insurance policy, and loss scenario—a huge task.

Fourth, insurance coverage depends on the policy language. A word can have different meanings under different state laws, and seemingly identical policies can differ in meaning because one policy has a comma or a word or paragraph spacing not found in the other policy.

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Fifth, an MDL cannot be justified on the basis of efficiency.

Sixth, any efficiency justification would be far outbalanced by the necessary delay in resolving meritorious insurance claims while the MDL process focuses first on the massive organizational, discovery, and class certification issues that the proposed MDL presents.

Seventh, MDL steering committee members would likely be class actions specialists rather than counsel with deep experience in litigating the complex property and business interruption insurance coverage issues that each underlying action will raise, to the potential detriment of the insurance claimants.

Finally, to the extent that some coordination is appropriate, district courts can consolidate cases within their particular district, as has occurred with past insurance litigation.

This brief was drafted pro bono by Allan B. Moore, Rani Gupta, David Goodwin, and Joan R. Li of of Covington and Burling LLP