MDL Panel Considers Consolidation of COVID-19 Business Interruption Claims

The National Law Review

On July 30, the Judicial Panel on Multidistrict Litigation held a Zoom hearing on a motion filed by plaintiffs' lawyers to consolidate hundreds of business interruption claims filed across the country. The Panel permitted a number of plaintiffs' counsel and two insurers' counsel to each argue for 3 uninterrupted minutes and then respond to questions.

Proponents of consolidation argued primarily that the sheer volume of cases already filed and soon to be filed would overwhelm the courts if each case progressed on its own schedule. They emphasized that efficiency and consistency are needed for just resolution of COVID-19 claims. While most counsel argued – in the first instance – for a complete consolidation, many advanced backups that underscored the very different nature of the cases. Backups included multiple MDLs based on the insurers (particularly those insurers with a large number of cases), multiple MDLs based on the jurisdiction, and various combinations thereof. Proponents also suggested that MDLs could include tracks within their structure to account for relevant differences between cases.

Insurers responded that these cases did not meet the requirements for consolidation. The cases involved differing plaintiffs with differing losses or damages and claims, different insurers and policy language, differences in state law, and different stay-at-home orders. Furthermore, counsel argued that most of these claims could be decided on the pleadings and, for those that are not, discovery will not be centralized due to the requisite focus on policyholders, not insurers. In support of their position, the insurers pointed to the overwhelming opposition to consolidation among amici, particularly United Policyholders.

The panel targeted its questions on whether consolidation would actually provide the purported benefits that proponents suggested and what would be the most effective dividing lines if it created one or multiple MDLs with multiple tracks. Among the judges' chief concerns, insofar as their questions

indicated, were the degree of variation in plaintiffs' claims, policy language and state law, and the associated diminishing of potential expedience. These questions revealed an appreciation of the differences among the cases, the potential viability of one or more MDLs with various tracks to accommodate differences, and whether an MDL process would enhance efficiency.

In light of these central differences among each of the cases, and the inability of plaintiffs' counsel to propose an MDL structure that could efficiently manage these cases, it seems likely that plaintiffs' motion to consolidate will be denied. The panel's decision is expected within the next few weeks.