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Barbershop Can Pursue COVID-19 Loss Suit Against Insurer

By **Daphne Zhang**

Law360 (November 5, 2020, 5:59 PM EST) -- A Texas federal judge rejected a Hartford unit's bid to toss a barbershop's class suit seeking COVID-19 loss coverage, holding that at least some coverage might be available under a limited virus coverage endorsement.

U.S. District Judge James R. Nowlin said Wednesday that a provision in Twin City Fire Insurance Co.'s virus endorsement plainly allows 30 days of business interruption coverage for property loss or damage caused by a virus. But the endorsement does preclude virus-related loss recovery other than the potential limited 30-day coverage, he added.

The judge did not buy Twin City's argument that the virus endorsement excludes all virus losses regardless of any concurrent events resulting in "any sequence of the loss."

"The court does not agree with defendant's conflation of COVID-19 and the 'virus,'" Judge Nowlin said.

The novel coronavirus, the COVID-19 pandemic, and the state closure orders might be "separate things" that may not belong to one virus-related causal chain which could be excluded by the policy, he added.

Independence Barbershop LLC of Austin, Texas, temporarily closed at the end of March due to government orders and reopened in early May. After the barbershop filed a business loss claim, Twin City denied coverage, asserting that COVID-19 did not cause property damage, and the virus endorsement bars coverage.

A policy excluding virus damage does not necessarily bar business interruption coverage when the store had to shut down to sanitize after it was visited by someone infected with the virus, or due to government closing orders to curb the spread of "a disease caused by a virus," Judge Nowlin said Wednesday.

However, the judge denied the barbershop's request to enable the doctrine of regulatory estoppel to forbid the application of the virus endorsement. The judge agreed with Twin City that "there is no basis in Texas law" to apply the estoppel as "the doctrine has been rejected by courts applying Texas law."

In support of its estoppel argument, the barbershop had contended that the insurance industry has misled state regulators by representing the virus endorsement as "a clarification of existing coverage" instead of an exclusion.

Counsel for the parties did not immediately respond to questions and requests for comment Thursday.

The barbershop is represented by Alex R. Straus, Gregory F. Coleman and Jonathan B. Cohen of Greg Coleman Law PC and Shanon J. Carson, Hans W. Lodge and John G. Albanese of Berger Montague PC.

Twin City is represented by Sarah D. Gordon, Zachary B. Schreiber and Catherine D. Cockerham of Steptoe & Johnson LLP; Alan E. Schoenfeld of Wilmer Cutler Pickering Hale and Dorr LLP; and Justin Edward VandenBout of Chamberlain Hrdlicka White Williams & Martin.

The case is Independence Barbershop LLC v. Twin City Fire Insurance Co., case number 1:20-cv-00555, in the U.S. District Court for the Western District of Texas.

--Editing by Alyssa Miller.

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