

THOUGHT LEADERSHIP

News

FEDERAL MULTI-DISTRICT LITIGATION PANEL REJECTS CENTRALIZATION OF SUITS INVOLVING COVID-19 BUSINESS INTERRUPTION CLAIMS

Newsbrief

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Last week, the United States Judicial Panel on Multidistrict Litigation (“MDL Panel”) declined to centralize various actions pending in Pennsylvania and Illinois district courts arising out of the myriad claims filed by insureds for business interruption losses allegedly caused by the COVID-19 pandemic and the subsequent governmental orders suspending or severely limiting operations of “non-essential” businesses. In re: COVID-19 Bus. Interruption Protection Ins. Lit., MDL No. 2942, 2020 WL 4670700 (U.S. Jud. Panel on Multidistrict Lit. Aug. 12, 2020).

The MDL Panel noted there are currently over 260 actions filed in 48 different district courts against over 100 insurers involving breach of contract and declaratory judgment actions. Some of the claimants were seeking to centralize the pre-trial proceedings in the litigation. Although the MDL Panel acknowledged the suits may have common questions of fact, it concluded industry-wide centralization would not be convenient, efficient, or further justice because each case involved different policies, coverages, conditions, exclusions, and policy language. Moreover, each policy was purchased in different states by different businesses in different industries. The MDL Panel concluded such differences outweighed any benefit provided by industry-wide centralization and would, in fact, undermine the purposes of centralization, which is to promote judicial convenience and efficiency.

The MDL panel appeared open to insurer-specific centralization, given that the policies at issue would likely be the same or similar, and it would therefore be more likely the actions would share common pre-trial issues. However, the MDL Panel avoided ruling on the issue because it was not brought up by any of the parties. Rather, the MDL panel issued orders to four insurers or groups of related insurers (Certain Underwriters at Lloyd’s, London; Cincinnati Insurance Company; the Hartford insurers; and Society Insurance) to show why actions against them should not be centralized.

Editor’s note: The decision from the MDL Panel was not surprising given the few numbers of cases thus far before that Panel and the incredible diversity of the proposals offered. Most of the policyholders couldn’t agree and the carrier positions were equally diverse. Neither the parties or the Panel addressed institutional discovery issues and such discovery efforts will drive future MDL proposals.

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When we created the first Insurance coverage/ bad faith litigation MDL in the Texas wind/ hail litigation several years ago, we advocated and the Texas MDL Panel adopted carrier-specific MDLs which worked exceptionally well. We were encouraged to see the federal MDL Panel recognize the appropriateness of such an approach in certain situations for certain carriers. MDL efforts will continue for carriers at both the state and federal levels for several more years and we will continue to monitor and report on all significant efforts.