

THOUGHT LEADERSHIP

News

U.S. DISTRICT COURT DISMISSES INSURED'S ACTION SEEKING DECLARATORY JUDGMENT THAT POLICY COVERS CLOSURE OF RESTAURANTS DUE TO COVID-19

Newsbrief

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Last week, the United States District Court, Northern District of Texas, dismissed an insured's action seeking declaratory judgment that its policy covers restaurants' closure due to COVID-19, concluding that the declaratory judgment action was duplicative of the insured's breach-of-contract action. In *Vandelay Hospitality Group v The Cincinnati Insurance Co.*, No. 3:20-CV-1348-D, 2020 WL 4784717 (N.D. Tex., Aug. 18, 2020, mem. op.), Vandelay purchased a commercial property insurance policy ("Policy") from Cincinnati. The Policy insured three of Vandelay's restaurants in Dallas, allegedly including coverage for direct physical loss and those incurred due to business interruptions.

Pursuant to COVID-19 related court orders prohibiting access to any premises operated as dine-in restaurants, and solely permitting take-out dining services, Vandelay closed all three of its restaurants. The same day, Vandelay provided a notice of claim under the Policy to Cincinnati, but Cincinnati submitted a reservation of rights letter to Vandelay indicating that the COVID-19 pandemic, without more, would not constitute direct physical loss or damage to property sufficient to trigger coverage under the Policy.

Vandelay subsequently sued Cincinnati, alleging a claim of breach of contract and seeking a declaratory judgment that the Policy covers the claimed losses. In response, Cincinnati moved to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim on which relief can be granted.

The court granted Cincinnati's motion and dismissed Vandelay's declaratory judgment action, without prejudice, based on the court's conclusion that Vandelay's declaratory judgment action was duplicative of its claim of breach of contract. "Because the purpose of a declaratory judgment is remedial and determines the parties' rights, duplicative relief may not be sought in a declaratory judgment. In other words, under Texas law, a trial court errs by granting...declaratory relief where the declarations sought duplicate the issues already before the trial court." The court reasoned that Vandelay's declaratory judgment action —that (1) the Policy is an all-risk commercial property insurance Policy and that it provides coverage for business income losses and extra expenses; (2) that the forced closures of the insured restaurants' premises is a prohibition of access to their premises and covered as defined in

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the Policy; (3) that Vandelay sustained direct loss to property because of COVID-19 and the related state and local orders; and (4) that the lost business income it sustained and continues to sustain is due to the necessary suspension of their operations— will be resolved in the context of Vandelay's claim of breach of contract.