

Pa. Restaurant Says Insurer Must Cover COVID-19 Closure

By [Matthew Santoni](#)

Law360 (April 13, 2020, 3:30 PM EDT) -- A Philadelphia restaurant asked a federal judge Friday to declare that orders closing “nonessential” businesses and dine-in services to prevent the spread of the novel coronavirus triggered “civil authority” coverage of lost income under its commercial insurance policy.

LH Dining LLC, doing business as the River Twice restaurant in Philadelphia’s Passyunk Square neighborhood, argued in its complaint that Admiral Indemnity Co. owed it coverage for its lost income and costs of decontaminating the restaurant after state and local authorities shut down dine-in services as part of their efforts to contain the risks of the highly contagious COVID-19.

“Under the policy, insurance is extended to apply to the actual loss of business income sustained and the actual, necessary and reasonable extra expenses incurred when access to the insured property is specifically prohibited by order of civil authority,” the complaint said. “Based on information and belief, the defendant has accepted the policy premiums with no intention of providing any coverage for business losses or the civil authority extension due to a loss and shutdown.”

The restaurant sought a court ruling on whether orders from the Pennsylvania and Philadelphia governments shutting down nonessential businesses were a “prohibition of access” under the civil authority extension of its insurance policy and a ruling on whether such orders trigger insurance coverage for River Twice and other businesses like it.

The policy’s exceptions to coverage for losses due to viruses or bacteria did not apply, the suit said.

"The viral exclusion does not apply because it was not the virus that caused business closures. Rather, it was the state and local governments exercising their civil authority through a variety of orders to shut down that caused the closures," Richard Golumb of Golumb & Honik PC, one of the attorneys representing River Twice, told Law360.

"Therefore, valid claims should be paid through the civil authority provisions which are common in business interruption policies."

River Twice said it closed on March 16, when Philadelphia first announced the closure of nonessential businesses. That order was followed by a statewide closure order by Pennsylvania Gov. Tom Wolf on March 19, and a March 22 emergency order from Philadelphia Mayor Jim Kenney officially prohibiting public gatherings and the operation of nonessential businesses.

"These orders, as they relate to the closure of all 'non-life-sustaining businesses,' evidence an awareness on the part of both state and local governments that COVID-19 causes damage to property," the complaint said. "This is particularly true in places where business is conducted, such as plaintiff's, as the requisite contact and interaction causes a heightened risk of the property becoming contaminated."

Citing the hours and days that the coronavirus can linger on surfaces and still be contagious, River Twice said the potential contamination by the virus and the cleaning required to remove it counted as a loss caused by the pandemic.

"The scientific community, and those personally affected by the virus, recognize the coronavirus as a cause of real physical loss and damage," the suit said. "It is clear that contamination of the insured property would be a direct physical loss requiring remediation to clean the surfaces of the restaurant."

The suit said restaurants like River Twice were more susceptible to contamination by the highly contagious virus because of their close quarters and the proximity necessary between staff and customers. While the state and local closure orders allowed restaurants to still offer carry-out or delivery service during the pandemic, River Twice's website indicated that it was closed completely.

River Twice claimed that any recalcitrance by its insurance was an illicit effort to hold on to the premiums it was paid and that the insurance claim for lost income and cleanup costs was necessary if the restaurant hoped to reopen.

"The virus is physically impacting River Twice restaurant. Any effort by the defendant to deny the reality that the virus causes physical loss and damage would constitute a false and

potentially fraudulent misrepresentation that could endanger the plaintiff and the public,” the complaint said. “A declaratory judgment ... will prevent the plaintiff from being left without vital coverage acquired to ensure the survival of the business due to the shutdown caused by the civil authorities’ response.”

Similar insurance lawsuits have been filed by restaurants in [Florida](#) and [Washington, D.C.](#), claiming that local shutdown orders caused their business losses.

Representatives for Admiral declined to comment Monday.

River Twice is represented by Richard M. Golumb and Kenneth J. Grunfeld of Golumb & Honik PC and Arnold Levin, Frederick Longer and Daniel Levin of [Levin Sedran & Berman LLP](#).

Counsel information for Admiral was not immediately available.

The case is LH Dining LLC v. Admiral Indemnity Co., case number [2:20-cv-01869](#), in the [U.S. District Court for the Eastern District of Pennsylvania](#).

--Editing by Alyssa Miller.