

June 17, 2021

# Traub Lieberman Partner Jeremy Macklin Co-Authors Article, “Taking the Longshot,” Featured in CLM Magazine

Related Attorneys: Jeremy S. Macklin

No one could have predicted the life-altering global pandemic caused by the COVID-19 virus or the impact the pandemic would have on every facet of life. In addition to the social and emotional effects on people, the pandemic has also impacted businesses across the spectrum, ranging from retail stores to restaurants to manufacturing facilities. Businesses experiencing financial hardship have been turning to their insurance companies to cover the losses sustained from travel bans, mandatory shutdowns, capacity limitations, and other restrictions limiting operations. For example, in the first-party insurance context, insureds may seek coverage for business-interruption losses caused by a municipality’s curfew or mandatory shutdown.

Nevertheless, first-party policies often include an endorsement introduced in 2006 by the Insurance Services Offices (ISO), which precludes coverage for loss or damage caused by or resulting from “any virus, bacterium, or other microorganism that induces or is capable of inducing physical distress, illness, or disease.”

When it comes to third-party insurance, insureds may seek coverage for claims arising out of their pandemic response on others, such as a university apartment complex enforcing leases for student tenants who can no longer attend in-person classes. Some general liability policies can, by endorsement, include an exclusion for injury or damage arising out of the actual or alleged transmission of a communicable diseases.

Legislatures in many states proposed bills to force insurers to provide insurance coverage for pandemic-related losses despite clear policy exclusions (though as of May 2021, no such legislation has been passed). In the absence of a legislative mandate—the constitutionality of which would likely be challenged—courts across the U.S. are facing the novel question of insurance coverage caused by insurer reliance on these types of exclusions. As a result, plaintiffs’ attorneys are asserting “longshot” equity and public-policy arguments in an attempt to circumvent virus and disease-related exclusions.

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