



## FOR IMMEDIATE RELEASE

### NEW JERSEY APPELLATE COURT RULES INSURER HAD NO DUTY TO PROVIDE COVERAGE FOR COVID-19 BUSINESS INTERRUPTION RELATED LOSSES

By: Joseph G. Harraka, Jr., Esq. Chairman of the Becker LLC Insurance Coverage Litigation Group.

The New Jersey Appellate Division in *Rockleigh Country Club, LLC. v. Hartford Insurance, et al.* (see *link at bottom of release for the summary judgment*) recently affirmed an order granting summary judgment to the insurer defendant on a number of insurance claims, all related to the insurer's denial of coverage for business interruption related losses sustained following Governor Phil Murphy's Executive Order 107, which closed nonessential businesses and prohibited social gatherings.

According to the per curiam Opinion, Plaintiff Rockleigh Country Club ("Rockleigh") submitted various claims for coverage against its insurer, Defendant Hartford Insurance Co. ("Hartford"), for "business losses and expenses it incurred due to the closure of its facility in response to EO 107's requirements and restrictions." Hartford had denied all of the claims. In its Complaint, Rockleigh asserted fourteen causes of action against Hartford, including breach of contract, breach of the covenant of good faith and fair dealing, bad faith, and fraud. Rockleigh's appeal to the New Jersey Appellate Division challenged a Bergen County Superior Court's order that had denied summary judgment for its business interruption, breach of contract, and extra expense coverage claims under the Hartford policy. Similar to other COVID-19 business interruption cases recently addressed by various New Jersey and other state and federal courts, the Hartford policy at issue included the phrase, "direct physical loss of or direct physical damage to ... Covered Property caused by or resulting from a Covered Cause of Loss."

According to the Appellate Division Opinion in *Rockleigh*, "direct physical loss of or direct physical damage" to Rockleigh's facility would be covered if no exclusion applied. The Hartford policy also included a provision for "Civil Authority" coverage in the event access to the premises is prohibited by a civil order. But also like a number of other recent pandemic-related business interruption cases, the Hartford policy included a "virus exclusion." That virus exclusion provision specifically stated that Hartford "will not pay for loss or damage caused directly or indirectly by ... [the ]presence, growth, proliferation, spread or any activity of 'fungus,' wet rot, dry rot, bacteria or virus."

In its ruling on Rockleigh's summary judgment motion, the Trial Court had rejected Rockleigh's contention that "direct physical loss or direct physical damage" equates to "loss of use" of its property. The Trial Court also rejected Rockleigh's claim under the "Civil Authority" provision of the Hartford policy and stated that since direct physical damage had not been sustained to the subject property, the claim was not covered under the Hartford policy. Finally, the Trial Court determined that the virus exclusion barred any claim for coverage made by Rockleigh under the Hartford policy.

The Appellate Division in *Rockleigh* stated -- "we have carefully considered plaintiff's arguments, but it is unnecessary that we address them in detail in this Opinion." "In the first instance, we affirm the summary judgment orders substantially for the reasons set forth in the Trial Court's thorough and thoughtful written Opinion." The Appellate Division's Opinion in *Rockleigh* continued "... in our opinion in *Mattdogg, Inc. v. Philadelphia Indemnity Insurance Company*, we carefully considered, exhaustively addressed, and rejected the identical arguments plaintiff relies on in support of its appeal herein and amici contends support a reversal of the court's summary judgment orders."

For more information on this case and the range of services the Group provides to insurance companies, please contact Joseph G. Harraka, Jr., Esq., Chairman of the Becker LLC Insurance Coverage Litigation Group.

<https://law.justia.com/cases/new-jersey/appellate-division-unpublished/2022/a-1826-21.html>

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