
Policyholders Nab Wins In COVID Suits, In 'Sea Change'

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Law360 (August 26, 2021, 6:16 PM EDT) -- Policyholders scored successes recently in battles with insurance companies when Pennsylvania and Nevada state court judges allowed suits over COVID-19 pandemic losses to proceed to discovery, marking what one policyholder attorney called a "sea change" in the way courts are seeing the cases.

Allegheny County Court of Common Pleas Judge Christine Ward on Wednesday kept intact JDS Development Group and Property Markets Group's claims over delay-in-completion coverage, in their eight-count suit seeking coverage for pandemic-related losses to a Manhattan construction project.

Robin Cohen of Cohen Ziffer Frenchman & McKenna LLP, whose firm represents the policyholders, told Law360 that the developers' victory "is also an example of a sea change we are beginning to see in state courts across the country in cases seeking insurance recovery for COVID-19 claims."

Cohen referenced an Aug. 16 win for the owner of the Cosmopolitan of Las Vegas in its Nevada state court suit. Clark County District Court Judge Timothy C. Williams refused last week to toss Cosmopolitan's suit against four insurers, saying the hotel and casino sufficiently alleged physical loss or damage based on the scientific community's confirmation that the coronavirus alters property conditions.

"While the Nevada court acknowledged this issue may evolve in discovery, it made the right call by refusing to short-circuit the coverage case and allow the case to proceed through discovery," Cohen said.

In Wednesday's order, Judge Ward overruled preliminary objections by AIG unit National Union Fire Insurance Co. of Pittsburgh, Pa., and other insurers to allow JDS and Property Markets to proceed on claims for delay-in-completion coverage as well as for sue and labor coverage, civil authority coverage and ingress/egress coverage for losses to a luxury condominium construction project.

The Manhattan building project was delayed by government closure orders tied to the pandemic, according to the suit. In a similar suit, JDS avoided dismissal Aug. 12 in Illinois state court over coverage for delays caused to a Brooklyn condominium tower project.

In June, National Union and the other insurers argued the delay-in-completion coverage was removed from certain builders' risk insurance policies prior to the developers' loss. The insurers said the project wasn't closed until March 2020, nearly a month after the policies were extended without the coverage.

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JDS and Property Markets hit back in July, saying the insurers misread the endorsement, which extended the policy period to July 2020 without extending the period of indemnity during which delay-in-completion coverage was recoverable, in an effort to "gut" the coverage entirely.

Matthew Goldstein of Flaster Greenberg PC, counsel for JDS and Property Markets, told Law360 that Judge Ward's order highlighted the importance of allowing COVID-19 insurance coverage cases to proceed past the pleading stage based on the allegations in the complaint.

Addressing the Cosmopolitan ruling, Goldstein said the Nevada court issued a "good opinion." The court "got it right by recognizing what the science community is saying about coronavirus causing damage to property," he said.

Representatives for the insurers didn't respond to requests for comment Thursday.

JDS and Property Markets are represented by Lee M. Epstein and Matthew A. Goldstein of Flaster Greenberg PC, and Robin Cohen, Jillian M. Raines and Meredith Elkins of Cohen Ziffer Frenchman & McKenna LLP.

National Union, Starr Indemnity and Liability Co., and Tokio Marine Kiln Syndicate 1880 of Certain Underwriters of Lloyd's of London are represented by David F. Russey, Mark A. May and Kyle J. Semroc of Dentons Cohen & Grigsby PC.

Endurance American Specialty Insurance Co. is represented by Marianne May, Robert W. Fisher and Eric P. Benedict of Clyde & Co. LLP.

The case is JDS Development LLC et al. v. National Union Fire Insurance Co. of Pittsburgh, Pa., et al., case number GD-20-009642, in the Court of Common Pleas of Allegheny County, Pennsylvania.

--Editing by Breda Lund.

ATTORNEYS MENTIONED

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