

Insurers, Policyholders Gear Up for Covid Suits' Next Phase, Bloomberg Law, ft. Joseph Miele Jr.

Joseph R. Miele, Jr., partner, is quoted in Bloomberg Law's article, written by Jacob Rund, on the next phase of COVID-19 related business interruption litigation. Published March 9, 2021.

- Covid-19 business insurance fight awaits appellate rulings
- More than 50 cases appealed to U.S. circuit courts

The closely watched battle between insurers and their policyholders over pandemic-linked financial losses has entered its next phase, as federal appeals courts prepare to weigh in on litigation with billions of dollars potentially at stake.

Initial rulings in more than 50 of these lawsuits have made their way to U.S. circuit courts, Bloomberg Law research shows. Nearly all appeals came from small businesses looking for do-overs after being told they can't tap their policies for financial hits stemming from government-issued shutdown orders and reduced operations.

The first appeals court opinions are likely to set the tone for future and pending challenges, and they also could contribute to an already complex landscape for Covid-19 business interruption claims. Insurers and policyholders are polishing their arguments and strategies, which involve numerous states' laws and are expected to encompass the impact of non-essential business closures, potential ambiguity in policy exclusions, and which courts should weigh in on this issue.

"There seem to be two, firmly entrenched camps on this issue," said Joseph Miele Jr., a partner at Kaufman Dolowich Voluck.

Judges in some jurisdictions have held that loss of property use could be enough to meet the physical loss or damage threshold. In others, judges found that a tangible property alteration was required, and that loss of use wasn't enough.

And with so many cases at different stages, there's an open questions about what, if anything, might push carriers involved in Covid-19 business insurance lawsuits to the negotiating table.

"Once the wave of appellate decisions starts to move in one direction, the other side is going to have to be more reasonable in their expectations," Miele said.