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California Case Is a Reminder That Not All Insurance Policies Are Alike Regarding COVID-19 Losses

A recent case from the Central District of California reminds us that not all insurance policies are alike. Depending on the particular policy, losses from the COVID-19 outbreak could qualify as property damage and therefore could be recoverable under an all-risk insurance policy.

COVID-19 has in many cases imposed significant costs on contractors, and in a host of ways. Contractors' attempts to recover these costs from owners or insurers have at times been frustrated by contractual or policy language written after a lengthy time, during which the risk of a pandemic on the scale of COVID-19 was not as much of a concern as it is now. This has led contractors to explore new, often creative legal theories in their attempts to recover costs flowing from COVID-19.

A recent Complaint filed in the Central District of California focuses on all-risk property insurance policies and the potential for contractors who have purchased such policies to classify contamination from COVID-19 as an insurable property loss.

In *AECOM v. Zurich Insurance Company*, Case No. 2:21-cv-00237-JAK-MRW (C.D. Cal), a contractor purchased "all-risk" property insurance from Zurich. This policy covered "economic losses from all risks not expressly excluded." According to the Complaint, the presence of COVID-19 on its properties "physically alter[ed] air, airspace, and surfaces preventing... (the contractor) from using its properties for their intended purpose and function."

As is common in drafting such insurance policies, insurers proceed to "expressly exclude" specific causes from coverage. An example of such an exclusion is one referring to contamination due to a "virus, disease causing or illness causing agent," which one might expect to see used when arguing that there is no coverage. But that exclusion may not be in every policy.

According to the Complaint, the contractor and Zurich agreed to remove such an exclusion from the "all-risk" policy. In turn, the contractor states that its losses from the COVID-19 virus should be covered under its all-risk policy and that Zurich breached its obligations under that policy by failing to reimburse the contractor for those costs.

The contractor filed its case in January and, as of this writing, Zurich has not yet filed a response to the Complaint. The attorneys at Peckar & Abramson will continue to follow this case closely and will provide updates as the parties' arguments solidify and

as the court begins to indicate its position.

For now, this case serves as a strong reminder to carefully review relevant insurance coverage. Not all policies are the same, and policy exclusions may differ, as this case indicates.

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