

## **PA Supreme Court Denies “King’s Bench” Petition to Consolidate All COVID-19 Business Interruption Cases Pending in State Court**

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On May 14, 2020, the Pennsylvania Supreme Court denied a Pittsburgh-based restaurant’s Emergency Application asking it to exercise its statutory and “King’s Bench” powers and assume plenary jurisdiction over the restaurant’s pending COVID-19 business interruption lawsuit filed against Erie Insurance Exchange and all similar COVID-19 business interruption cases in Pennsylvania state courts. The Court’s order, which does not set forth the basis for the Court’s denial of the Petition, comes just two weeks after the petitioning restaurant filed its Emergency Application on April 29, 2020. Erie Insurance Exchange opposed the Petition, and AIG Property Casualty U.S., Inc., American Property Casualty Insurance Association, Insurance Agents and Brokers of Pennsylvania, the Insurance Federation of Pennsylvania, the National Association of Mutual Insurance Companies, Pennsylvania Association of Mutual Insurance Companies and the Pennsylvania Defense Institute filed applications for leave to file amicus briefs opposing the Petition.

As discussed in our recent article addressing the restaurant’s April 29, 2020 King’s Bench Petition, the Pennsylvania Supreme Court’s “King’s Bench” power is authorized by Section 1 of the Schedule of the Judiciary Article of the Pennsylvania state constitution and enables Pennsylvania’s highest court to assume plenary jurisdiction over any issue, even when no matter is pending in a Pennsylvania court. Similarly, 42 Pa. C.S. § 726 authorizes the Pennsylvania Supreme Court to pluck cases of immediate public importance pending in other Pennsylvania state courts and exercise plenary jurisdiction over them. The petitioning Pittsburgh restaurant in this matter sought to have the Pennsylvania Supreme Court assume plenary jurisdiction over its own COVID-19 business interruption insurance dispute against Erie Insurance Exchange. It also asked the state supreme court to assume plenary jurisdiction over all other similar COVID-19 business interruption cases that have been or could be filed in Pennsylvania state courts, consolidate those cases, and develop an expedited system for resolving them.

Parties opposing the Petition argued, among other things, that while the COVID-19 pandemic is of immediate public importance, that circumstance does not *ipso facto* mean that the petitioner-restaurant’s insurance contract dispute with its insurer over business interruption insurance coverage is of such immediate public importance that its resolution cannot occur in the normal course via the standard judicial process of civil litigation in Pennsylvania state courts. The opposition further argued that each insurer’s use of different coverage forms, provisions and exclusions across a wide array of different policies would make any judicial findings limited to the specific facts of each COVID-19 case. That, coupled with the many different types of insured businesses and variable underlying facts, they argued, prevents the court from issuing any meaningful industry-wide rulings. As a result, they asserted that any attempts to make general rulings in these cases would not actually stave off the expected surge of COVID-19 business insurance coverage litigation.



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Today’s order does not make clear precisely why the Pennsylvania Supreme Court denied the restaurant’s “King’s Bench” Petition. Nevertheless, we expect similar efforts by COVID-19 business interruption plaintiffs in other states to apply for some form of consolidated management of their pending state court COVID-19 cases. We also expect the United States Judicial Panel on Multi-District Litigation to consider many of the same arguments raised by the petitioning restaurant and the opposing insurers in this Pennsylvania case in connection with the pending applications to consolidate all federal COVID-19 business interruption cases nationwide, which we also wrote about recently. Regardless of whether the federal court system or any particular state court systems ultimately consolidate the COVID-19 business interruption insurance cases into singular proceedings, we expect the number of such cases to rise sharply nationwide over the next several months.

If you have any questions or need more information, contact Sean P. Mahoney ([mahoneys@whiteandwilliams.com](mailto:mahoneys@whiteandwilliams.com); 215.864.6342) or Ciaran B. Way ([wayc@whiteandwilliams.com](mailto:wayc@whiteandwilliams.com); 215.864.6815).

As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. [Read all of the updates here.](#)

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