

Two More Insureds Ante Up: Oklahoma Tribes Step Up to the Business Interruption Table

On Tuesday, March 24, 2020, the Chickasaw and Choctaw Nations (the "Nations"), located in Oklahoma, filed separate business interruption coverage lawsuits against their collective group of insurers who allegedly issued "all risk" policies to both Nations. These actions, styled Chickasaw Nation Dept. of Commerce v. Lexington Insurance Company, et. al.¹ and Choctaw Nation of Oklahoma v. Lexington Insurance Company, et. al.² allege that the insureds own and operate property associated with multiple commercial businesses and services within Oklahoma. Although not alleged in the pleadings, Chickasaw Nation owns and operates more than 15 casinos and other gambling facilities, while Choctaw Nation appears to own and operate at least seven.

In many ways, these two cases will be very similar to others filed to date, including the cases filed by New Orleans' Oceana Grill and California's The French Laundry restaurants. The Nations have alleged that the USA as a whole was infected by COVID-19 and that, as a result, their property "sustained direct physical loss or damage and will continue to sustain direct physical loss or damage covered by the policies, including but not limited to business interruption, extra expense, interruption by civil authority, limitations on ingress and egress, and expenses to reduce loss." It is not clear whether the Nations' policies have virus exclusions or civil authority coverage provisions.

Aside from the similarities, these cases will also add an additional interesting facet to the coverage discussion concerning COVID-19-related exposures. Business interruption coverage provisions are typically written with some calculation of lost profits or lost revenue. Casinos and other facilities in the gambling industry involve many different streams of income aside from just gambling, often incorporating restaurants, spas, hotels, and family-friendly attractions. These unique characteristics will make business interruption claims like those filed by the Chickasaw and Choctaw Nations especially complex. Other than the issues these cases share with many other Coronavirus-derived losses, there will be many additional opportunities for insurers to challenge the insureds over various aspects of their claims. We anticipate these are just the first of many similar cases filed by insureds in the casino industry, as those companies are currently being exposed to monumental losses resulting from current shutdowns and will continue to be exposed to losses, due to the public's lingering fear over infection in crowded public spaces.

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¹Case No. CV-20-3S, District Court of the Pontotoc County, State of Oklahoma.

²Case No. CV-20-42, District Court of the Bryan County, State of Oklahoma. In both cases, the defendants are fifteen insurers, including multiple Lloyd's of London syndicates and many domestic carriers, such as XL, Evanston and Hallmark, among others.

