

Daily Journal

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25TH ANNUAL CALIFORNIA LAWYER ATTORNEYS OF THE YEAR

*In re: Covid-19
Business
Interruption
Protection
Insurance Litigation*

**INSURANCE COVERAGE
LITIGATION**

Litigation erupts as businesses across the nation aim to recoup losses through insurance

Underwriters nationwide uniformly denied post-pandemic claims resulting from coronavirus-related losses on business interruption insurance policies. Often, policyholders sued to reverse the denials. So it was unsurprising that an early move was an attempt to lump the cases together in multidistrict litigation.

That approach was strongly disfavored by the insurance industry, which turned to Goetz to keep the conflict on a case-by-case basis.

Goetz, a firm-wide co-chair of O'Melveny & Myers' litigation practice who specializes in insurance coverage, consumer class actions, product liability and mass torts, is a leader in business interruption claim defense. He called Covid-19 "this whole world-changing event," but he's been around long enough to have seen other crises develop.

"I've been doing this for 40 years and there's always some issue. It may have started with asbestos and then there was cyber—there's always something significant in the insurance world." Even so, he said, the virus stood out. "This was different in scope and pace. This affected everyone. Nothing so abrupt and pervasive happened since 1918" when the influenza pandemic caused an estimated 100 million deaths worldwide.

In April 2020 client Chubb, the

largest commercial insurer in the U.S., asked Goetz to take on multiple class actions and individual cases stemming from coronavirus business interruptions claims. Most were brought by restaurants, hotels and retailers who sought coverage for business losses they contended were caused by stay-at-home orders. The stakes were enormous, with mushrooming claims threatening to push the insurance industry to its limits.

A team of O'Melveny colleagues backed Goetz, including partners Allen Burton and Leah Godesky of the New York office, Amy J. Laurendeau of Newport Beach and Daniel M. Petrocelli of Los Angeles plus counsel Samantha Goldstein of Washington, D.C., and Zoheb Noorani of Los Angeles.

"The breadth of impact of the pandemic was the biggest I've seen in my career," Goetz said. In what became the centerpiece of his effort, he served as lead lawyer for the insurance industry as it pushed back against plaintiffs' effort to centralize more than 130 cases against multiple insurers. On July 30 he argued at a remote hearing before the Judicial Panel on Multidistrict Litigation on behalf of 33 insurers that a single nationwide proceeding for different claims under different policies against different insurers based on different theories of coverage in response to different government orders would lead to litigation chaos.

At the hearing—attended by more than 440 on an audio-only phone line—three speakers used the same word to describe the anticipated problems with managing so sprawling an array of cases, according to



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media reports. The word was "nightmare," and the speakers were Goetz, who used it to describe the likely outcome of consolidation; one of the JPML panel judges, who worried that without consolidation the 200 class actions then in play would fit nightmare's definition; and even plaintiff attorney David Boies, of Boies Schiller Flexner LLP, who represented policyholder clients opposed to a nationwide MDL.

Goetz said support from plaintiffs for individual cases over consolidation was a surprise. "I can add to my bucket list that I was on the same as the United Policyholders, advocates for the other side." He added that a central concern was timeliness. "There have been more than 100 decisions on motions to dismiss [in individual cases], and most favored underwriters. A trial in New Orleans favored underwriters. If you'd been in a MDL, things would never move that fast. In general, tort lawyers wanted

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an MDL while coverage lawyers opposed it. We had support on both sides of the 'v.'"

On Aug. 12, the MDL panel not only denied industry-wide centralization but also rejected creation of an insurer-specific MDL for Chubb. The decision allowed the insurance industry to avoid "what could have been one of the most consequential MDLs in U.S. litigation history," Reuters reported. *In re: Covid-19 Business Interruption Protection Insurance Litigation*, MDL2912 (U.S. JPML, op. filed Aug. 12, 2020).

"We prevailed," Goetz said. "The pandemic has had such a dramatic impact on people and businesses. We don't think it's covered under our policies, but it's very hard on them."

— John Roemer