

A Compendium Of Court Decisions Affirming The Necessity Of Direct Physical Damage in BI Coverage

Business interruption (BI) policies are not designed to cover pandemics and necessitate a direct physical loss to property to be activated. As such, the widespread litigation against insurers, attempting to alter BI policies to cover pandemic-related income losses, is a misguided effort that places the interests of attorneys ahead of business owners'. **To date, there has been an increasing number of court rulings affirming insurers' position.**

Court Rulings

U.S. District Court for the Northern District of California

*"Judge Tigar wrote that because the government shutdown orders were preventative in nature — seeking to prevent the spread of the virus — **that lends credence to [insurer's] argument that they were not issued in response to physical loss or damage.**" ([Law360](#), 9/14)*

Michigan Federal Court

*"**The policy only covers lost income in the event of physical damage to a property, and even if that were not the case, the virus exclusion in the policy would bar pandemic-related coverage,** the judge ruled. The ruling adds to the growing list of insurer wins on the issue of business interruption coverage for coronavirus-related losses." ([Business Insider](#), 9/4)*

U.S. District Court for the Central District of California

*"An insured cannot recover by attempting to artfully plead impairment to economically valuable use of property as physical loss or damage to property,' Wilson said, adding that [the plaintiff] has only plausibly alleged that in-person dining restrictions interfered with the use or value of its property — **'not that the restrictions caused direct physical loss or damage.'**" ([Law360](#), 8/28)*

U.S. District Court for the Southern District of California

*"Most courts have rejected these claims, finding that **the government orders did not constitute direct physical loss or damage to property,**' Judge Bencivengo said in a ruling for [insurer]." ([Business Insurance](#), 9/14)*

Florida Federal Court

*"Because [the plaintiff's] damages resulted from COVID-19, which is clearly a virus, **neither the Governor's executive order narrowing dental services to only emergency procedures nor the disinfection of the dental office of the virus is a 'Covered Cause of Loss'** under the plain language of the policy's exclusion,' the ruling states." ([Business Insider](#), 9/3)*

Texas Federal Court

*"In so ruling, Judge Ezra indicated that 'while there is no doubt that the COVID-19 crisis severely affected Plaintiffs' businesses, [insurer] cannot be held liable to pay business interruption insurance on these claims as **there was no direct physical loss,** and even if there were direct physical loss, the Virus Exclusion applies to bar Plaintiffs' claims.'" ([The National Law Review](#), 8/25)*



District of Columbia Superior Court

*"The judge found the plaintiffs offered no evidence that the virus was present in their insured properties and found that **the mayor's orders did not have any material or tangible effect on the insured's properties.**"*

([Insurance Journal](#), 8/7)

Florida Federal Court & Eleventh Circuit Court

*"Coverage will not be triggered for similar claims because **the presence of the COVID-19 virus, or cleaning related to the virus, does not constitute direct physical loss or damage to property.** The Eleventh Circuit's holding provides helpful guidance that will most certainly be used in the analysis of COVID-19 business interruption claims."*

([JD Supra](#), 7/21)

Michigan State Court

*"The court said that [the plaintiffs'] argument was 'just simply nonsense, and **it comes nowhere close to meeting the requirement that there has to be some physical alteration to or physical damage or tangible damage** to the integrity of the building.'" ([JD Supra](#), 7/17)*

New York Federal Court

*"New York law is clear that **this kind of business interruption needs some damage to the property to prohibit you from going.** You get an A for effort, you get a gold star for creativity, but this is not what's covered under these insurance policies."*

([The National Law Review](#), 5/20)