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 Illinois

"[Judge] ***ruled that the language "loss to" requires a physical loss to the property itself, not the loss of use of the property to the insured.****"* (HarrisMartin, 11/20)

U.S. District Court for the District of New Jersey

"There is ***no requirement****, as plaintiff suggests,* ***for the virus to have physically caused the loss****, such as via contamination of the property."* (New Jersey Law Journal, 11/6/20)

U.S. District Court for the Western District of Texas

"A Texas federal judge has handed [insurer] a win over a Texas [policyholder] that alleged the insurer wrongly denied it coverage of losses resulting from the COVID-19 pandemic, saying ***an 'unambiguous' virus exclusion bars coverage.****"* (Law360, 10/27)

Camden County Superior Court

"Polansky noted that ***a clause in the policy bars coverage in the event of a virus****, even where another cause or event contributes to the loss."*
(New Jersey Law Journal, 11/6/20)

U.S. District for the Northern District of California

"U.S. District Judge Charles R. Breyer said the ***insurer's virus exclusion not only applies to standalone viruses, but also pandemics."*** (Law360, 10/26)

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

"A [policyholder] became the latest plaintiff to be denied COVID-19-related business interruption coverage by an insurer, when a federal district court ruled ***Wednesday there was no physical damage under the terms of its policy and that there was also no coverage because of a virus exclusion."***
(Business Insurance, 11/5)

Court Rulings (Continued)

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

*"U.S. District Judge Jeffrey U. Beaverstock said in a Wednesday order that [plaintiff] **failed to allege physical damage.** The practice's argument that it experienced a "period of restoration" when the government allowed it to reopen was also "unavailing," the judge said."* (Law360, 10/22)

U.S. District Court for the District of Minnesota

*"A Georgia federal judge has dismissed a [policyholder's] COVID-19 business interruption coverage lawsuit, **ruling that a government stay-at-home order did not cause the eatery to sustain 'direct physical loss of or damage'** to its insured property or surrounding premises."* (Bloomberg Government, 10/19)

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

*"A Georgia federal judge has dismissed a [policyholder's] COVID-19 business interruption coverage lawsuit, **ruling that a government stay-at-home order did not cause the eatery to sustain 'direct physical loss of or damage'** to its insured property or surrounding premises."* (HarrisMartin, 10/7)

U.S. District for the Middle District of Florida

*"The judge **rejected [policyholder's] argument that economic damage is synonymous with physical loss.** 'Plaintiff's argument is unpersuasive because Florida law and the plain language of the policies reflect that actual, concrete damage is necessary,' he said."* (WestLaw Today, 9/29)

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

*"U.S. Magistrate Judge Jacqueline Scott Corley of the Northern District of California noted that the business owners policy for Fresno, California-based waxing salon Franklin EWC Inc. **contained an exclusion for virus-related losses.**"* (Business Insurance, 9/23)

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)

Court Rulings (Continued)

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)

U.S. District Court for the Eastern District of Michigan

*"**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 Middle District of Florida

*"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)

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 Western District of Texas

*"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 inured 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)

Court Rulings (Continued)

Michigan's Ingham County 30th Judicial Circuit 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)

Southern District of Florida & 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)

U.S. District Court for the Southern District of New York

"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)