

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 Eastern District of North Carolina

"The court ruled that coverage for the insureds' business interruption losses related to the COVID-19 pandemic was excluded under a policy provision..." (JD Supra, 3/23/21)

U.S. District Court in Boston

"Legal does not plausibly allege that its business interruption losses resulted from the presence of COVID-19 at the Designated Properties,' the ruling said." (Business Interruption, 3/9/21)

U.S. District Court in Cleveland

"This case turns on the meaning of the language 'physical loss of or damage to' property in the insurance policies,' Travelers wrote, but does not define the terms, the ruling said." (Business Insurance, 2/19/21)

U.S. District Court in Phoenix

*"Central to the policy is that **the loss must be tied to 'accidental physical loss or accidental physical damage'** to the properties,' the ruling said." (Business Interruption, 3/9/21)*

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

*"An Indiana federal judge on Monday ruled that [policyholder] is not entitled to coverage for pandemic-related business interruption losses, finding that **a clear virus exclusion** in the [policyholder's] policies forecloses their insurance claims." (Law360, 3/8/21)*

Civil District Court for the Parish of Orleans

*"A New Orleans judge **denied a motion** for declaratory judgment that insurance coverage is owed to a restaurant for business income that was lost when it was required to close its dining room because of the COVID-19 pandemic." (Claims Journal, 2/17/21)*



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

"The plaintiff **alleged that COVID-19 was 'present'** at the insured properties on a particular date, but Chief Judge K. Michael Moore held that **this allegation was insufficient** to state a claim for coverage and granted the insurer's motion to dismiss with prejudice." ([JD Supra](#), 1/25/21)

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

"There is **no 'direct physical loss'** where the alleged harm consists of the mere presence of the virus on the physical structure of the premises." ([JD Supra](#), 1/25/21)

U.S. District Court for the District of Kansas

"Chief Judge Julie A. Robinson **rejected [plaintiff's] argument that direct physical loss or damage does not require a tangible, permanent loss or physical alteration** of the property." ([HarrisMartin](#), 12/4/20)

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

"Judge Robert N. Scola Jr. found that these allegations failed to state a claim for coverage under the policy's business income coverage provision, which **required 'direct physical loss of or damage to'** the insured property to trigger coverage." ([JD Supra](#), 1/25/21)

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

"A federal judge on Friday tossed [plaintiff's] proposed class action seeking coverage from [insurer] for losses due to the coronavirus, finding that establishments limited to carry-out service **had not sustained the 'direct, physical loss'** necessary to trigger their insurance policies." ([Law360](#), 1/15/21)

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

"A 'monetary loss is not a 'distinct, demonstrable, physical alteration of the property,' **which is required to trigger coverage** under [plaintiff's] business property policy, Barker wrote, throwing out the lawsuit." ([Bloomberg Government](#), 12/8/20)

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

"This virus exclusion lets [insurer] off the hook even if the [plaintiffs] could show that Covid-19 or statewide shutdown orders actually altered their property, [judge] said." ([Bloomberg Law](#), 11/30)

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 District of Arizona

"An Arizona federal judge has dismissed a COVID-19 business interruption insurance action filed by the [plaintiff], *ruling that the policy's virus exclusion bars coverage.*" ([HarrisMartin](#), 11/23)

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 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)

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 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 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)

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 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 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 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 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)

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 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)

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)

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)

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)

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)