

BLOGS

COVID-19 Business Interruption

Business Interruption Coverage for COVID-19: Recent Pro-Policyholder Decisions

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While many courts have dismissed these suits on the ground that there is no “direct physical loss or damage” to property, the tide may be starting to turn. Twice in the past three months policyholders have won partial summary judgment in cases seeking business interruption coverage for losses caused by stay-at-home orders:

- On October 9, 2020, in *North State Deli LLC, et al. v. Cincinnati Insurance Company, et al.*, Case No. 20-CVS-02569, the State of North Carolina General Court of Justice, Superior Court Division, County of Durham, granted plaintiff’s motion for partial summary judgment that its policies provide coverage for Business Income and Extra Expenses for plaintiff’s loss of use and access to its property due to government orders. The court held that the policy’s undefined terms “physical loss” and “physical damage” have distinct and separate meanings, and that the phrase “direct physical loss” includes the inability to utilize or possess something.
- On November 23, 2020, in *Perry Street Brewing Company LLC v. Mutual of Enumclaw Insurance Company*, Case No. 20-2-02212-32, the Superior Court of the State of Washington for Spokane County granted PSBC’s motion for partial summary judgment. The court held that the interruption of PSBC’s business operations as a result of the Governor’s COVID-19-related proclamations “was a direct physical loss of PSBC’s property because PSBC’s property could not physically be used for its intended purpose, i.e., PSBC suffered a loss of its property because it was deprived from using it.” Like the court in *North State Deli*, the PSBC court reasoned that the policy’s undefined terms “loss of” property and “damage to” property are distinct from one another, that “physical loss means something other than damage,” and that the dictionary definition of “loss” includes “deprivation.”

In addition, policyholders seeking business interruption coverage for COVID-19-related losses have defeated insurer motions to dismiss over a dozen times since August:

<u>Case Name</u>	<u>Court</u>	<u>Case Number</u>	<u>Date of Order</u>
Elegant Massage, LLC v. State Farm Mutual Automobile Insurance Company	United States District Court for the Eastern District of Virginia	2:20-cv-00265-RAJ-LRL	December 9, 2020
JGB Vegas Retail Lessee, LLC v. Starr Surplus Lines Insurance Company	District Court, Clark County, Nevada	A-20-816628-B	November 30, 2020

Dino Palmieri Salons, Inc. v. State Automobile Mutual Insurance Company	Ohio Court of Common Pleas, Cuyahoga County	CV-20-932117	November 17, 2020
Hill and Stout PLLC v. Mutual of Enumclaw Insurance Company	Superior Court of the State of Washington, King County	20-2-07925-1 SEA	November 13, 2020
Independence Barbershop LLC v. Twin City Fire Ins. Co.	United States District Court, Western District of Texas	1:20-cv-00555-JRN	November 4, 2020
Taps & Bourbon on Terrace, LLC v. Underwriters at Lloyds, London and Main Line Insurance Offices, Inc.	In the Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania, Civil Trial Division	20093025	October 26, 2020
Chapparells Inc. v. Cincinnati Insurance Company	Ohio Court of Common Pleas, Summit County	CV-2020-06-1704	October 21, 2020
Lombardi's, Inc. et al v. Indemnity Insurance Company of North America	In the District Court of Dallas County, Texas, 14th Judicial District	DC-20-05751	October 15, 2020
Francois Inc. v. Cincinnati Insurance Company	In the Court of Common Pleas, Lorain County, Ohio	20CV201416	September 29, 2020
Urogynecology Specialist of Florida LLC v Sentinel Insurance Company, Ltd.	United States District Court, Middle District of Florida	6:20-cv-01174-ACC-EJK	September 24, 2020
Johnston Jewelers, Inc. v. Jewelers Mutual Insurance Company, S.I.	In the Sixth Judicial Circuit in and For Pinellas County, Florida, Circuit Civil Division	20-002221-CI	September 22, 2020
Blue Springs Dental Care, LLC v. Owners Ins. Co.	United States District Court, Western District of Missouri	20-CV-00383-SRB	September 21, 2020
Ridley Park Fitness, LLC v. Philadelphia Indemnity Insurance Company	In the Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania, Civil Trial Division	200880358	August 31, 2020
Optical Services USA/JC1 et al v Franklin Mutual Insurance Company	Superior Court of New Jersey, Law Division, Bergen County	BER-L-3681-20	August 13, 2020
K.C. Hopps, Ltd. v. Cincinnati Insurance Company	United States District Court, Western District of Missouri	20-CV-00437-SRB	August 12, 2020
Studio 417, Inc. v. Cincinnati Insurance Company	United States District Court, Western District of Missouri	20-CV-03127-SRB	August 12, 2020

While court rulings will vary case-by-case based on applicable state law, the precise language of the policy at issue, and the factual circumstances surrounding the loss, these above decisions demonstrate that no policyholder should assume or accept that "there is no coverage" without a thorough review by coverage counsel.