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LEGAL UPDATES

Missouri Federal Court Opens Door to COVID-19 Business Interruption Claims

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On August 12, 2020, U.S. District Court Judge Stephen Bough for the Western District of Missouri ruled that the plaintiff insureds may pursue claims for business income losses due to COVID-19 under standard property and casualty policies.

Thus far, many insurers across the country have taken a rigid stance that property policies do not cover COVID-19 related losses because presence of the virus does not cause “physical loss or damage” to covered property — a threshold issue for securing insurance proceeds under policies providing business interruption coverage. The insurers argue that neither the presence of the virus at covered locations, nor the mandated closure of business under state or local COVID-19 related orders constitutes “physical loss” or “physical damage” to property.

In its Order, the Court denied the insurer’s motion to dismiss the lawsuit, ruling instead that a group of hair salons and restaurants based in Missouri can proceed with their claims to recover business interruption losses because the term “physical loss” (which is typically undefined in property insurance policies) should be broadly construed:

Upon review of the record, the Court finds that Plaintiffs have adequately stated a claim for direct physical loss. First, because the Policies do not define a direct “physical loss” the Court must “rely on the plain and ordinary meaning of the phrase.” The Merriam-Webster dictionary defines “direct” in part as “characterized by close logical, causal, or consequential relationship.” “Physical” is defined as “having material existence: perceptible especially through the senses and subject to the laws of nature.” “Loss” is “the act of losing possession” and “deprivation.”

Applying these definitions, Plaintiffs have adequately alleged a direct physical loss. Plaintiffs allege a causal relationship between COVID-19 and their alleged losses. Plaintiffs further allege that COVID-19 “is a physical substance,” that it “live[s] on” and is “active on inert physical surfaces,” and is also “emitted into the air.” COVID-19 allegedly attached to and deprived Plaintiffs of their property, making it “unsafe and unusable, resulting in direct physical loss to the premises and property.” Based on these allegations, the Amended Complaint plausibly alleges a “direct physical loss” based on “the plain and ordinary meaning of the phrase.” (Internal citations omitted).

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The decision provides a potential roadmap for policyholders who have suffered financial losses due to COVID-19. While the Court did not reach the merits of the ultimate claim, the Order is supportive to policyholders seeking to secure business interruption coverage for lost profits and other expenses resulting from the pandemic.

For more information, please contact [Alexander Brown](#), [Insurance Recovery & Counseling Practice Group Chair](#) [Kim Winter](#) or your regular Lathrop GPM contact.