

Client Alert

Insurers' COVID-19 Notepad: What You Need to Know Now - Week of August 29, 2022

August 30, 2022

Courts Dismiss COVID-19 Business Interruption Claims

On August 25, 2022, the Washington Supreme Court affirmed in an en banc decision, the grant of summary judgment to Mutual of Enumclaw on two dental office owners and operators' putative COVID-19 business interruption class action. The court held that "[i]t is unreasonable to read 'direct physical loss of . . . property' in a property insurance policy to include constructive loss of intended use of property. Such a loss is not 'physical.'" Opinion at 3. The court also noted as persuasive authority that "the national consensus is that COVID-19 and related governmental orders do not cause physical loss of or damage to a property and do not trigger coverage under similar policy language." *Id.* at 18. The court also held that the virus exclusions in plaintiffs' policies applied because the causal chain that led to the plaintiffs' closure of their dental practices was initiated because of COVID-19. *Id.* at 25. The case is *Hill & Stout, PLLC v. Mut. Of Enumclaw Ins. Co.*

On August 19, 2022, the district court for the Eastern District of Louisiana granted Westchester Surplus Lines Insurance Company's motion to dismiss a commercial property owners' COVID-19 business interruption claim. The court concluded that under Louisiana law "direct physical loss of or damage to property" covers "only tangible alterations of, injuries to, and deprivations of property." Order at 16. The case is *Port Cargo Servs., LLC v. Westchester Surplus Lines Ins. Co.*

On August 23, 2022, the district court for the District of Oregon granted Cincinnati Insurance Company's motions to dismiss several Portland restaurants' COVID-19 business interruption complaints. The court found the losses were "economic in nature" and the allegations presented no "physical damage or loss to their property." Order at 10. The court explained that this interpretation of "physical" was reinforced by the "period of restoration" provision. *Id.* at 9. The case is *Good George, LLC v. Cincinnati Insurance Co.*

On August 24, 2022, the district court for the District of Colorado granted Ace American Insurance Company's motion to dismiss a money transfer service provider's COVID-19 business interruption claim. The court concluded that the policy's Pollution and Contamination Exclusion barred coverage for the plaintiff's claim and found that "any claimed loss resulting from the Closure Orders that arose in response to the COVID-19 pandemic would not be covered" given that the exclusion "applies even to loss or damage that was 'contributed to' by a virus." Order at 8-9. The case is *Western Union Co. v. Ace Am. Ins. Co.*

On August 19, 2022, the Appellate Court of Illinois affirmed the dismissal of four different groups of bar and restaurant owners' COVID-19 business interruption claims against Society Insurance. The court found that the plaintiffs made precisely the same arguments that the court had rejected in *State & 9 Street v. Society Insurance*, 2022 IL App (1st) 211222-U. Opinion at 6. The court also held that "the absence of an exclusion does not create coverage." *Id.* Finally, the court rejected the plaintiffs' attempt to rely on the doctrine of *contra proferentem*

because it found plaintiffs' policies to be unambiguous. *Id.* at 7. The cases are *JCI Restaurant Co. v. Society Insurance*; *Station Two, LLC v. Society Insurance*; *Black Rock Restaurants, LLC v. Society Insurance*; and *R Restaurant Group LLC v. Society Insurance*.

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