

CLIENT ALERT

Insurers' COVID-19 Notepad: What You Need to Know Now - Week of November 1, 2021

November 2, 2021

Insurer Wins First COVID-19 Business Interruption Jury Trial

On October 28, 2021, Cincinnati Insurance Company prevailed in the nation's first jury trial in a COVID-19 business interruption suit. Following a three-day jury trial, the federal jury in the district court for the Western District of Missouri found that Cincinnati did not breach its policy when it denied a Kansas City restaurant and bar operator's claim for its pandemic-related losses. The [verdict sheet](#) did not provide details on the jury's reasoning. The case is *K.C. Hopps, Ltd. v. The Cincinnati Ins. Co.*

Courts Dismiss COVID-19 Business Interruption Claims

On October 26, 2021, the district court for the District of New Jersey [granted](#) Ohio Security Insurance Company's motion for judgment on the pleadings and dismissed a wedding venue's putative COVID-19 business interruption class action. The court found the virus exclusion in the plaintiff's policy unambiguously barred the plaintiff's claims. Order at 4. The case is *Caterer's in the Park LLC v. Ohio Sec. Ins. Co.*

On October 26, 2021, the district court for the Eastern District of Virginia [granted](#) Markel Insurance Company's motion to dismiss a COVID-19 business interruption claim filed by a group of fitness franchise owners. The court concluded that the plaintiffs did not experience "a 'direct or physical loss' that entitles them to recovery because there is no evidence that 'any insured property was damaged or that Plaintiff was permanently dispossessed of any insured property.'" Order at 14. The court further found that the policy's virus exclusion precluded recovery, as "the COVID-19 pandemic was the motivation of the government shutdowns at issue." *Id.* at 16. The case is *Fountain Enterprises, LLC, et al. v. Markel Ins. Co.*

New Business Interruption Suits Against Insurers:

On October 22, 2021, several real estate managers [sued](#) Affiliated FM Insurance Company in New York state court (New York County) for breach of contract. The plaintiffs allege they have an "all risk" policy with business interruption, civil authority, communicable disease, extended period of liability, and ingress/egress coverage and allegedly contains no virus exclusion. Complaint ¶¶ 3, 81–83. According to the managers, the "inundation" of the coronavirus caused physical loss or damage to their properties. *Id.* ¶ 5. Along with the presence of the virus, the governmental closure orders purportedly "resulted in Plaintiffs' tenants stoppage of rental payments due to their inability to utilize the space for which the space was intended," causing the managers to "suffer[] substantial economic damages." *Id.* ¶ 8. The case is *Broadwall Mgmt. Corp., et al. v. Affiliated FM Ins. Co.*

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