

CLIENT ALERT

Insurers' COVID-19 Notepad: What You Need to Know Now - Week of August 1, 2022

August 1, 2022

Courts Dismiss COVID-19 Business Interruption Claims

On July 25, 2022, the Fourth Circuit affirmed the dismissal of several Florida restaurants' COVID-19 business interruption complaints. According to the court, there was "no reversible error." Order at 3. The case is *Skillets, LLC v. Colony Insurance Co.*

On July 21, 2022, the Eighth Circuit affirmed the dismissal of two dental clinics' COVID-19 business interruption claims. The court found that the case was not substantially different from *Oral Surgeons, P.C. v. Cincinnati Insurance Co.*, 2 F.4th 1141 (8th Cir. 2021) and that Arkansas and Iowa law on contract interpretation do not differ "in a material way." Order at 3. According to the court, the clinics' allegations that the virus was present at its location, causing damage, was a "threadbare recital of" the language in the policy. *Id.* at 4. The court also rejected the clinics' claims that it was covered under civil authority coverage because the complaint failed to allege physical loss of or damage to neighboring properties. *Id.* at 5. The case is *Rock Dental Arkansas PLLC v. Cincinnati Insurance Co.*

On July 22, 2022, the Seventh Circuit affirmed the dismissal of a barbershop's COVID-19 business interruption claim for the reasons given in its prior opinions in *Sandy Point Dental, P.C. v. Cincinnati Ins. Co.*, 20 F.4th 327 (7th Cir. 2021); *East Coast Entertainment of Durham, LLC v. Houston Cas. Co.*, 31 F.4th 547 (7th Cir. 2022); and *Paradigm Care & Enrichment Center, LLC v. West Bend Mut. Ins. Co.*, 33 F.3d 417 (7th Cir. 2022). Opinion at 1. The case is *Legacy Sports Barbershop LLC, et al. v. Continental Cas. Co.*

On July 28, 2022, the Ninth Circuit affirmed the dismissal of a health system's COVID-19 business interruption claim. The court held that all of the plaintiff's losses fell under its policy's contamination and "government-order" exclusions. Opinion at 2-3. The case is *Palomar Health v. Am. Guarantee & Liab. Ins. Co.*

On July 27, 2022, the district court for the Central District of California granted Affiliated FM Insurance Company's motion for judgment on the pleadings and dismissed a talent agency and its holding company's COVID-19 business interruption claims. The court explained that the Ninth Circuit had already rejected the plaintiffs' argument that loss of use constitutes physical loss or damage. Order at 9. The court also rejected the plaintiff's argument for civil authority coverage because "the Complaint does not allege that the civil authority closure orders were directed primarily at Plaintiffs' properties due to the presence of the COVID-19 virus." *Id.* at 12. Finally, the court also held the contamination exclusion in plaintiffs' policy applied and that plaintiffs failed to allege breach of the implied covenant of good faith and fair dealing because there was no underlying breach of contract. *Id.* at 14-15. The case is *Creative Artists Agency, LLC v. Affiliated FM Ins. Co.*

On July 21, 2022, the Circuit Court of Cook County, Illinois granted Zurich American Insurance Company's motion to dismiss a footwear manufacturer and retail operator's COVID-19 business interruption claim. Relying on the opinions of the Illinois Appellate Court in *Lee v. State Farm Fire & Cas. Co.*; *ABW Dev., LLC v. Continental Cas. Co.*; *Sweet Berry Café, Inc. v. Society Ins., Inc.*; *Firebirds Int'l, LLC v. Zurich Am. Ins. Co.*; and *GPIF Crescent Court Hotel LLC v. Zurich Am. Ins. Co.*, the court found the

plaintiff “has not stated a cause of action under any of the policy provisions that require a showing of direct physical loss of or damage to property.” Order at 6. The court further found coverage was barred by the policy’s contamination exclusion. *Id.* at 8. The case is *Wolverine World Wide, Inc. v. Zurich Am. Ins. Co., et al.*

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