

CLIENT ALERT

Insurers' COVID-19 Notepad: What You Need to Know Now - Week of August 8, 2022

August 8, 2022

Courts Dismiss COVID-19 Business Interruption Claims

On August 2, 2022, the district court for the Middle District of Florida granted Zurich American Insurance Company's motion to dismiss a restaurant operator's COVID-19 business interruption claim. The court found that the policyholder's allegations did not materially differ from those in *SA Palm Beach, LLC v. Certain Underwriters at Lloyd's London*, 32 F.4th 1347 (11th Cir. 2022) and, therefore, that it could not state a claim for direct physical loss of or damage to property. Order at 4-5. The case is *Planet Hollywood Int'l, Inc. v. Zurich Am. Ins. Co.*

On August 3, 2022, the district court for the Northern District of Alabama granted Cincinnati Insurance Company's motion to dismiss a group of eateries' COVID-19 business interruption claim. The court found dismissal was warranted because the claim was controlled by the Eleventh Circuit's decision in *Dukes Clothing, LLC v. Cincinnati Ins. Co.*, 35 F.4th 1322 (11th Cir. 2022). The case is *Serendipitous LLC, et al. v. Cincinnati Ins. Co.*

On August 3, 2022, the Florida Third District Court of Appeal affirmed the dismissal of a wedding venue's COVID-19 business interruption claim. The court held that the case was indistinguishable from the court's earlier decision in *Commodore, Inc. v. Certain Underwriters at Lloyd's London*, which held that loss of intended use without tangible alteration to property is insufficient to state a claim for direct physical loss. Opinion at 3. The case is *Suhaag Garden, Inc. v. Certain Underwriters at Lloyd's London*.

New Business Interruption Suits Against Insurers:

A property manager sued Continental Casualty Company, Interstate Fire and Casualty Company, Endurance American Specialty Insurance Company, Liberty Mutual Fire Insurance Company, QBE Specialty Insurance Company, Starr Surplus Lines Insurance Company, and Zurich American Insurance Company in New York state court (New York County) for breach of contract. The plaintiff allegedly had various "all-risk" policies with special perils business interruption. Complaint ¶¶ 3, 7. It claims it suffered from a business interruption because of "the manifestation of COVID-19" by people present at the insured properties. *Id.* ¶ 9. Because it had to spend more on cleaning and personal protective measures because of COVID-19 and the resulting public health orders, the plaintiff says it incurred business loss and extra expense. *Id.* ¶ 10. The case is *RXR Partners, LLC v. Continental Casualty Co.*

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