

CLIENT ALERT

Insurers' COVID-19 Notepad: What You Need to Know Now - Week of December 20, 2021

December 20, 2021

On December 13, 2021, the Indiana Superior Court, Marion County, granted Cincinnati Casualty Company's cross-motion for summary judgment in a theatre's COVID-19 business interruption claim. The court concluded that the "undisputed facts here establish that the SARS-CoV-2 virus can be cleaned or dies on its own naturally," *id.*, and, therefore, found "that the virus does not cause physical alteration as a matter of law." *Id.* at 31. The case is *Indiana Repertory Theatre, Inc. v. The Cincinnati Cas. Co., et al.*

On December 10, 2021 the district court for the Northern District of Illinois granted Twin City Fire Insurance Company's motion to dismiss a Chicago deli's COVID-19-related business interruption complaint. The court held that the deli did not sustain "direct physical loss or direct physical damage" to its property. Order at 12. Finding "it is implausible" that the governor issued the closure orders because of the presence of the virus at the deli's property rather than the community as a whole, the court held the insured's "suspension of operations" were not "caused by . . . physical damage." *Id.* at 12-13. The case is *Firenze Ventures LLC v. Twin City Fire Insurance Co.*

On December 14, 2021, the district court for the Southern District of New York granted Valley Forge Insurance Company's motion to dismiss a diamond dealer's COVID-19 business interruption claim. The court followed the "avalanche of authority" that "has held that COVID-19 does not qualify as 'physical loss or damage' for insurance coverage," Order at 1, and concluded that coverage was unavailable, as "the tangible condition of the business's property has not been harmed." *Id.* at 6-7. The case is *J. Kleinhaus & Sons, LLC v. Valley Forge Ins. Co.*

On December 14, 2021, the district court for the District of New Jersey granted Berkshire Hathaway Specialty Insurance Company's motion to dismiss a COVID-19 business interruption claim filed by the owner and operator of childcare centers. The court found that COVID-19, and not closure orders, was the predominant and proximate cause of the plaintiffs' losses, and their claims therefore "fall squarely within, and are barred by, the Policy's Virus Exclusion." Order at 5. The case is *The Learning Experience Corp., et al. v. Berkshire Hathaway Specialty Ins. Co.*

On December 14, 2021, the district court for the Southern District of Illinois granted West Bend Mutual Insurance Company's motion to dismiss a real estate development company's COVID-19 business interruption claim. The court held that the plaintiff's claim for coverage due to physical loss was foreclosed by the Seventh Circuit's recent decisions in multiple COVID-19 business interruption cases. Order at 4. Because plaintiff had not alleged any physical loss to any property, the court also rejected the plaintiff's claim for civil authority coverage. *Id.* at 5. The case is *River Hills Dev. LLC v. W. Bend Mut. Ins. Co.*

On December 14, 2021, the district court for the Northern District of Alabama granted The Cincinnati Insurance Company's motion to dismiss a hotel owner and operator's COVID-19 business interruption claim. The court held the plaintiff's claim "plainly falls" within the communicable disease exclusion to the policy's crisis event expense coverage. Order at 6. The case is *SJP Inv. Partners v. The Cincinnati Ins. Co.*

On December 15, 2021, the district court for the District of Oregon granted Fireman’s Fund Insurance Company’s motion to dismiss a health care provider’s COVID-19 business interruption claim. Noting “a long line of district court decisions” in the District of Oregon to support its decision, the court held the plaintiff failed to adequately allege any direct physical loss or damage to covered property. Order at 8-9. The case is *The Or. Clinic, P.C. v. Fireman’s Fund Ins. Co.*

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