

## CLIENT ALERT

### Insurers' COVID-19 Notepad: What You Need to Know Now - Week of May 23, 2022

May 23, 2022

#### Courts Dismiss COVID-19 Business Interruption Claims

On May 13, 2022, the U.S. Court of Appeals for the 11th Circuit affirmed the grant of Westchester Surplus Lines Insurance Company's motion for judgment on the pleadings in a restaurant's COVID-19 business interruption claim. The court found that Florida courts would adopt the majority position that loss of business as a result of government closure orders is not covered under a policy providing coverage for "physical loss of or damage to" property because "some tangible alteration of the property is required." Opinion at 3-4. The case is *Café Int'l Holding Co. LLC v. Chubb Ltd.*

On May 17, 2022, the U.S. Court of Appeals for the 11th Circuit affirmed the dismissal of a pizzeria's putative COVID-19 business interruption class action. The court held there was "no coverage for loss of use based on intangible and incorporeal harm to the property due to COVID-19 and the closure orders that were issued by state or local authorities[,] even though the property was rendered temporarily unsuitable for its intended use." Opinion at 3. The case is *Gio Pizzeria & Bar Hosp., LLC v. Certain Underwriters at Lloyd's, London.*

On May 13, 2022, the U.S. Court of Appeals for the 8th Circuit affirmed the dismissal of two dental practices' COVID-19 business interruption claims. The court held "the dental practices' argument that the loss of use of their offices constituted 'direct physical loss of or damage to' their property is foreclosed by our prior precedent." Opinion at 2. The case is *Glen R. Edwards, Inc. v. Travelers Cas. Ins.*

#### New Business Interruption Suits Against Insurers:

A theater and restaurant operator sued Fireman's Fund Insurance Company in California state court (San Diego County) for declaratory relief, breach of contract, and bad faith. The Complaint alleges that the plaintiff's loss of business caused by a suspension of operations from the COVID-19 pandemic and related government orders is a covered cause of loss and a "direct physical loss or damage not excluded or limited in [the policy's] Coverage Form." Complaint at ¶¶ 3, 4. The case is *Theatre Box-San Diego, LLC v. Fireman's Fund Ins. Co.*

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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