

CLIENT ALERT

Insurers' COVID-19 Notepad: What You Need to Know Now - Week of May 30, 2022

May 31, 2022

Courts Dismiss COVID-19 Business Interruption Claims

On May 19, 2022, the Michigan Court of Appeals affirmed the grant of summary disposition to Property-Owners Insurance Company in a COVID-19 business interruption claim filed by restaurant operators. The court found that the closure orders upon which the restaurant operators claims were based did not result in a “direct physical loss of or damage to property” as the court defined that phrase in *Gavrilides Mgmt. Co., LLC v. Mich. Ins. Co.*, as they “did not cause or constitute a ‘tangible and measurable presence or effect in, on, or to the premises.’” Opinion at 3. The court further concluded that, even if the plaintiffs’ claims were covered by the policy, “the claims would nonetheless be barred by the virus exclusion.” *Id.* at 6. The case is *Three Won Three, Corp., et al v. Property-Owners Ins. Co.*

On May 19, 2022, the Michigan Court of Appeals affirmed the grant of summary disposition to Farm Bureau General Insurance Company of Michigan in a spa operator’s COVID-19 business interruption claim. The court found that the case was nearly identical to that in *Gavrilides Mgmt. Co., LLC v. Mich. Ins. Co.* and affirmed on the basis of the reasoning and analysis set forth therein. Opinion at 2. The case is *Massage Bliss, Inc. v. Farm Bureau Gen. Ins. Co. of Mich.*

On May 20, 2022, the Appellate Court of Illinois affirmed the dismissal of a group of hotel operators’ COVID-19 business interruption claims. The court explained that “the mere presence of the virus on surfaces does not constitute ‘physical loss of or damage to property’ because [SARS-CoV-2] does not physically alter the appearance, shape, color, structure, or other material dimension of the property.” Opinion at 9. The case is *GPIF Crescent Ct. Hotel LLC v. Zurich Am. Ins. Co.*

On May 20, 2022, the Appellate Court of Illinois affirmed the dismissal of a restaurant chain’s COVID-19 business interruption complaint. The court held the policies at issue “explicitly exclude ‘Contamination,’ defined as ‘[a]ny condition of property due to the actual presence of any virus,’” from coverage. Order at 11. Thus, the court held that the plaintiff’s allegations about business interruption from COVID-19 were “not a suspension caused by a covered cause of loss.” *Id.* at 12. The case is *Firebirds International, LLC v. Zurich American Insurance Co.*

On May 20, 2022, the U.S. Court of Appeals for the Sixth Circuit affirmed the dismissal of a recreational facility’s COVID-19 business interruption complaint. It said that the plaintiff never tangibly lost possession of its property, even if it was unable to open. Order at 4. It refused to overturn or distinguish the facts in this case from its decision in *Estes v. Cincinnati Ins. Co.*, 23 F.4th 695, 699 (6th Cir. 2022). *Id.* It also rejected the facility’s allegations regarding contamination of the property, holding that “more is needed to satisfy the plausibility standard.” *Id.* at 5. The case is *Renaissance/The Park, LLC v. Cincinnati Insurance Co.*

On May 24, 2022, Maryland’s Court of Special Appeals affirmed the dismissal of a restaurant’s COVID-19 business interruption claim. The court said that the policy did not provide coverage for the restaurant’s losses and found that, as a matter of law, “the Governor’s order did not cause ‘direct physical loss of or damage to’” the restaurant’s property, Order at 12, and the restaurant did not allege “facts sufficient to establish that the COVID-19 virus somehow altered the structure of the restaurant so as to

trigger coverage under the policy.” *Id.* As for the increasingly small number of cases ruling for policyholders, the Court said: “Those cases are, in the words of Judge Paul W. Grimm of the United District Court for the District of Maryland, ‘clear outliers that do not meaningfully weigh against the overwhelming authority that supports the conclusion that ‘direct physical loss or direct physical damage’ requires a showing of ‘actual or tangible harm to or intrusion on the property itself.’” *Id.* at 13. The case is *GPL Enterprise, LLC v. Certain Underwriters at Lloyd’s*.

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