

## Texas Court Dismisses Suit Based On Hurricane-Related Port Closures, Citing Lack Of Physical Damage

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A Texas federal district court ruled that an insurer had no duty to cover business interruption losses resulting from Texas port closures prior to Hurricane Harvey, finding that the closures were not caused by “direct physical loss of or damage to” covered property. *Evanston Ins. Co. v. AmSpec Holding Corp.*, 2020 WL 6152190 (S.D. Tex. Oct. 20, 2020).

AmSpec, a testing and inspection company for ships along the Gulf Coast, allegedly incurred nearly \$1 million in business losses and extra expenses because of port closures immediately prior to the landfall of Hurricane Harvey in August 2017. Evanston Insurance denied coverage, citing the absence of “direct physical loss of or damage to” any of the ports where AmSpec performed its services. The court agreed and granted the insurer’s summary judgment motion.

The policy’s Civil Authority provision extended coverage to losses sustained while access to covered locations “is specifically denied by an order of civil authority.” The provision further required the civil order to “be a result of direct physical loss of or damage to property.” The parties disputed whether the port closures were “a result of direct physical loss of or damage to property, other than at the covered location.” AmSpec argued that the provision requires only that physical damage “was happening elsewhere” and that the phrase “a result of” indicates a less stringent causal requirement than “due to” or other verbiage. The court rejected this assertion, stating that “[t]he general rule is that civil authority coverage is intended to apply to situations where access to an insured’s property is prevented or prohibited by an order of civil authority issued as a direct result of physical damage to other premises in the proximity of the insured’s property.” (Citations omitted).

In addition, the court noted that port closures instituted in advance of storm arrival (based on wind conditions and estimated storm times) do not constitute direct physical damage. The court stated: “When, as here, there is no prior damage to consider and the Coast Guard bulletins only contain precautionary language, the causal link between any prior damage and the civil authority order is missing.” The court further rejected AmSpec’s contention that direct physical loss could be established by damage that occurred after the issuance of the civil authority orders and port closures.

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