

Georgia Court Dismisses Coverage Suit, Ruling That Complaint Fails To Allege Physical Loss Or Damage

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A Georgia federal district court ruled that a childcare company was not entitled to business interruption or civil authority coverage for losses stemming from its cessation of operations during the state-mandated shutdown. *Lemontree Academy, LLC v. Utica Mutual Ins. Co.*, No. 3:20-cv-126 (M.D. Ga. Mar. 11, 2021).

The court rejected the policyholder's assertion that the COVID-19 virus caused "direct physical loss or damage" to property, emphasizing the absence of allegations that the virus was present on any insured structures. Further, the court held that even if the policyholder could prove that the virus was present at its facility, coverage would still be unavailable because the policyholder did not allege that the virus physically damaged or altered its property. While the policyholder did allege that its facility became uninhabitable, the court held that this "omnipresent specter" of COVID-19 exposure is a threat experienced by 'every home, office, or business that welcomes individuals into an indoor setting across the globe' and is insufficient to trigger business income coverage under the terms of the policies."

The court also rejected the policyholder's claim under a civil authority provision, noting the absence of allegations of damage to "other property," a prerequisite to such coverage.

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