

New Jersey Court Rules That Virus Exclusions Preclude Coverage For Restaurants' Business Losses

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Applying New Jersey, Washington and Florida law, a New Jersey federal district court ruled that COVID-19-related coverage claims were barred by virus exclusions in the applicable policies. *Colby Rest. Grp., Inc. v. Utica National Ins. Grp.*, No. 1:20-cv-05927 (D.N.J. Mar. 12, 2021).

A restaurant group that operates food service businesses in several states sought business income, civil authority and extra expense coverage for losses incurred during the pandemic-related shutdown. The court ruled that even assuming that coverage under these provisions was available, virus exclusions unambiguously barred coverage.

The policyholder argued that virus exclusions were intended to apply only in the event of actual contamination at the insured premises, and that because the insured property was not contaminated by COVID-19, the exclusions did not apply. Rejecting this assertion, the court noted that nothing in the exclusionary language requires actual contamination. Rather, the exclusions bar losses caused by “any virus . . . that induces or is capable of inducing physical distress, illness or disease.” Further, the court declined to consider arguments based on an ISO Circular, explaining that consideration of such extrinsic evidence is appropriate only where language is ambiguous. Finally, the court rejected the policyholder’s contention that the states’ respective closure orders (rather than the virus itself) were the proximate cause of loss.

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