

## In Trio Of Rulings, New Jersey Federal District Courts Dismiss COVID-19-Related Coverage Suits

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Last month, three federal district courts in New Jersey dismissed suits seeking coverage for business losses stemming from government shutdown orders issued in response to the COVID-19 pandemic.

In *Dezine Six, LLC v. Fitchburg Mutual Ins. Co.*, 2021 WL 1138146 (D.N.J. Mar. 25, 2021), the court ruled that a virus exclusion precluded coverage for a hair salon's COVID-19 related losses. The court rejected the policyholder's assertion that the exclusion did not apply to coverage under the Business Income, Extra Expense and Civil Authority coverage provisions because those provisions referred to "expenses" whereas the virus exclusion referred to "loss or damage." The court also rejected a regulatory estoppel argument, noting that the policyholder failed to allege that the insurer made misrepresentations to insurance regulators with respect to the virus exclusion.

Applying similar reasoning and enforcing a virus exclusion, another New Jersey federal district court dismissed a food retailer's coverage suit in *Benamax Inc. LLC v. Merchant Mutual Ins. Co.*, 2021 WL 1171633 (D.N.J. Mar. 29, 2021). The court concluded that the exclusion "is a complete defense to coverage compelling the dismissal of Plaintiff's complaint on this ground alone."

In *7th Inning Stretch LLC v. Arch Ins. Co.*, 2021 WL 1153147 (D.N.J. Mar. 26, 2021), the court dismissed a professional baseball organization's coverage suit, finding that allegations that government actions forced the cessation of minor league baseball, resulting in lost income, did not satisfy the "direct physical loss of or damage to property" requirement. The court held that allegations that it was "statistically certain" that the virus was present on insured property were not sufficient to trigger coverage, stating that "the presence of a virus that harms humans but does not physically alter structures does not constitute coverable property loss or damage."

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