

Pennsylvania Court Dismisses Class Action Suits Seeking Business Interruption Coverage

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A Pennsylvania federal district court dismissed four class action suits seeking coverage for COVID-19-related losses, finding that the insured properties did not incur any “direct physical loss.” *Chester County Sports Arena v. Cincinnati Specialty Underwriters Ins. Co.*, 2021 WL 1200444 (E.D. Pa. Mar. 30, 2021).

The plaintiff businesses held “all risk” property policies that included identical coverage provisions for Business Income, Extended Business Income, Extra Expense and Civil Authority. Cincinnati denied coverage for the businesses’ pandemic-related claims, and in ensuing litigation, moved to dismiss the policyholders’ complaints. The court granted the insurer’s motion, finding that the businesses failed to allege any “direct physical loss,” as required by the policy. The court stated:

Government orders in response to a virus simply do not fit this physicality requirement. Under Pennsylvania law, clear and unambiguous terms (like “direct physical loss”) must be given their plain meaning, and when there is no alteration to a physical structure, Third Circuit precedent points in the direction of finding no physical loss. . . . A contrary holding would require expanding “direct physical loss” beyond its plain meaning to encompass purely economic loss.

In so ruling, the court noted the “plethora of similar cases in district courts across the country” that have also dismissed coverage suits involving comparable policy provisions and factual allegations.

Authors and Contacts

[Bryce Friedman](#)

Partner

bfriedman@stblaw.com

+1-212-455-2235

