

Pennsylvania Court Rules That Dental Practice Is Entitled To Coverage For COVID-19-Related Losses

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A Pennsylvania trial court granted a dental practice's summary judgment motion, finding that it was entitled to coverage under Business Income, Extra Expense and Civil Authority coverage provisions, and that several policy exclusions did not apply. *Timothy A. Ungarean, DMD v. CAN*, 2021 WL 1164836 (Pa. Ct. Comm. Pl. Allegheny Cnty. Mar. 22, 2021).

The policyholder alleged that as a result of COVID-19 and state shutdown orders, he was forced to cease most of his business operations, resulting in lost income. The court ruled that the policyholder was entitled to coverage for those losses, rejecting numerous arguments asserted by the insurer.

First, the court found that the policyholder suffered "direct physical loss of or damage to property," rejecting the contention that some physical alteration of or demonstrable harm to property is required. The court held that "loss" reasonably encompasses the loss of use of property. The court further found that the loss of use of property was "direct" and "physical" because the spread of COVID-19 and related government orders had a "close logical, causal and/or consequential relationship to the ways in which Plaintiff materially utilized its property and physical space."

Second, the court held that the policy's "period of restoration" clause did not indicate that the contract required actual tangible damage in order to trigger Business Income and Extra Expense coverage. The court reasoned that restoration could include changes relating to partitions, ventilation, sanitization or expansion of existing space.

Third, the court concluded that the policyholder was entitled to Civil Authority coverage, holding that the phrase "prohibits access to the described premises" did not require a complete prohibition of access. The court stated:

Although Plaintiff's business (a dental practice) was technically permitted to remain open to conduct certain limited emergency procedures, this does not change the fact that an action of civil authority effectively prevented, or forbade by authority, citizens of the Commonwealth from accessing Plaintiff's business in any meaningful way for normal, non-emergency procedures; procedures that likely yield a significant portion of Plaintiff's business income.

Finally, the court ruled that coverage was not barred by exclusions for Contamination, Fungi, Wet Rot, Dry Rot and Microbes, or Consequential Loss. The court noted that while a contamination exclusion “might, at times, cover viruses when viruses actually contaminate property,” it did not bar coverage where, as here, the losses were caused by the risk of person-to-person transmission as well as state orders issued to mitigate that spread, separate and apart from any contamination of property. With respect to the Consequential Loss exclusion, the court deemed it unenforceable, finding that its application “would effectively eliminate coverage for any kind of loss and/or damage caused by any covered peril, which closes Plaintiff’s business while it is being repaired.”

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