

## New Hampshire Court Rules That Pollution Exclusion Bars Coverage For COVID-19-Related Claims, But That Microorganism Exclusion Is Ambiguous

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A New Hampshire trial court ruled that a pollution exclusion bars coverage for business interruption claims arising out of COVID-19-related state orders, but deemed a microorganism exclusion ambiguous. *Schleicher & Stebbins Hotels, LLC v. Starr Surplus Lines Ins. Cos.*, No. 217-2020-CV-00309 (N.H. Super. Ct. June 15, 2021).

A group of hotels sought a declaration that they are entitled to insurance coverage for business losses related to the spread of COVID-19. Ruling on the parties' cross-motions for summary judgment, the court held that a pollution exclusion, defined to include "bacteria, fungi, mold, mildew, virus or hazardous substances," precluded coverage. The court rejected the hotels' assertion that the exclusion was ambiguous as to claims arising out of COVID-19 because the terms "escape," "release," "discharge" and "dispersal" are terms of art that pertain to environmental waste. The court explained that the plain text of the exclusion applies to viruses and that, in any event, COVID-19 is "dispersed" through coughing, talking and other behavior.

However, the court ruled that a microorganism exclusion that applied to loss arising out of or relating to "mold, mildew, fungus, spores or other microorganisms" was ambiguous as to whether it encompassed a virus. The court also ruled that allegations of property contamination by the COVID-19 virus satisfy the policies' "loss or damage" or "direct physical loss of or damage to property" requirements. In so ruling, the court rejected the insurers' contention that loss or damage to property must be incapable of remediation or result in dispossession. In concluding that the spread of COVID-19 to insured properties satisfied the requisite "distinct and demonstrable change" standard under New Hampshire law, the court reasoned that "property contaminated with SARS-CoV-2 is 'distinct' from uncontaminated property" and that infection of property is "demonstrable" through a series of means, including laboratory testing."

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