

## Small Minority Of Courts Allow COVID-19 Coverage Claims To Proceed Notwithstanding Virus Exclusions

06.30.21



(Article from *Insurance Law Alert*, June 2021)

For more information, please visit the [Insurance Law Alert Resource Center](#).

The vast majority of courts have continued to dismiss policyholder suits seeking coverage for business losses incurred during the COVID-19 pandemic and related government shutdowns. However, a few courts have concluded that the allegations at issue sufficiently allege claims for coverage.

In *Seifert v. IMT Ins. Co.*, 2021 WL 2228158 (D. Minn. June 2, 2021), a Minnesota federal district court declined to dismiss a salon’s claim for coverage under a business income policy provision. The policy covered loss of business income caused by “direct physical loss of or damage to property.” The court reasoned that physical loss “of” property is distinct from physical loss “to” property and that the former includes a property owner’s temporary inability to occupy or use property as intended. The court concluded that the salon owner plausibly alleged coverage under this provision because he claimed that executive orders aimed to stop the spread of COVID-19 forced his businesses to close. However, the court dismissed the salon owner’s civil authority coverage claims based on the absence of allegations that any nearby properties were damaged, as required by the policy.

In addition, the court ruled that coverage was not precluded by a virus exclusion, which applied to damage caused by a “virus, bacterium or other microorganism,” “regardless of any other cause or event that contributes concurrently or in any sequence to the loss.” The court explained that the salon owner alleged a “single cause of loss: the executive orders.” The court thus concluded that “the policies’ virus exclusion is intended to preclude coverage only when there has been some direct or indirect contamination of the business premises, not whenever a virus is circulating in a community and a government acts to curb its spread by means of executive orders of general applicability.”

The applicability of a virus exclusion was also at issue in *Atwells Realty Corp. v. Scottsdale Ins. Co.*, 2021 WL 2396584 (R.I. Super. Ct. June 4, 2021). There, a Rhode Island trial court declined to dismiss a civil authority coverage claim, finding that issues of fact existed as to whether the virus exclusion barred coverage for that claim. The exclusion applied to “loss or damage caused by or resulting from any virus . . . that induces or is capable of inducing physical distress, illness or disease.” The court reasoned that civil authority coverage was not necessarily precluded by the exclusion because the underlying complaint alleged that the loss was caused by executive orders, not the virus itself, and because the complaint did not allege the presence of the virus on insured property.

These rulings stand in contrast to the weight of decisions issued in recent months holding that a virus exclusion precludes coverage for business interruption and civil authority claims arising out of COVID-19 executive orders. *See, e.g., Spring House Tavern, Inc. v. American Fire & Cas. Co.*, 2021 WL 2473939 (E.D. Pa. June 16, 2021); *Hartford Fire Ins. Co. v. Moda, LLC*, 2021 WL 2474216 (Conn. Super. Ct. June 15, 2021); *Soundview Cinemas, Inc. v. Great American Ins. Grp.*, 142 N.Y.S.3d 724 (N.Y. Sup. Ct. 2021). The Seventh Circuit is poised to rule on this issue in *Mashallah Inc. v. West Bend Mutual Ins. Co.*, No. 21-1507 (7th Cir. Oral Arg. June 2, 2021).

Authors and Contacts	<a href="#">Bryce Friedman</a>	<a href="#">Joshua Polster</a>
	Partner	Partner
	<a href="mailto:bfriedman@stblaw.com">bfriedman@stblaw.com</a>	<a href="mailto:joshua.polster@stblaw.com">joshua.polster@stblaw.com</a>
	<a href="tel:+12124552235">+1-212-455-2235</a>	<a href="tel:+12124552266">+1-212-455-2266</a>

