

Minnesota Court Dismisses COVID-19 Coverage, Finding No Coverage Under Business Interruption, Civil Authority Or Contamination Provisions (Insurance Law Alert)

03.31.22



(Article from *Insurance Law Alert*, March 2022)

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A Minnesota district court dismissed a health care organization's COVID-19-related coverage suit, finding that neither government orders nor allegations of actual viral presence on property sufficiently alleged "direct physical loss of or damage" to property, as required by the policy. *HealthPartners, Inc. v. Am. Guar. & Liab. Ins. Co.*, 2022 WL 597518 (D. Minn. Feb. 28, 2022).

When government orders required HealthPartners to limit its medical services, it sought coverage for lost business revenue. American Guarantee paid for losses incurred at three fitness centers that were required to close during the relevant time period, but denied HealthPartners' claim relating to other alleged losses. The court granted American Guarantee's motion to dismiss HealthPartners' coverage suit, issuing the following noteworthy holdings:

Government Orders: The court ruled that government orders do not constitute "direct physical loss of or damage to" property. Citing *Oral Surgeons, P.C. v. Cincinnati Ins. Co.*, 2 F.4th 1141 (8th Cir. 2021) (discussed in our [July/August 2021 Alert](#)), the court held that a policyholder's loss of use of property is not a physical loss for purposes of insurance coverage.

Direct Loss "of" Property: The court rejected HealthPartners' assertion that policy language requiring "direct loss of" property is distinguishable from "direct loss to" property, such that a loss of use of property due to government orders is potentially covered. The court acknowledged that a different Minnesota district court held that "direct physical loss of" property is plausibly alleged when a policyholder alleges that government orders resulted in complete business closure, see *Seifert v. IMT Ins. Co.*, 542 F. Supp. 3d 874 (D. Minn. 2021) (discussed in our [June 2021 Alert](#)), but noted that here, HealthPartners did not plausibly allege a closure of its facilities.

Contamination as Direct Physical Loss: The court held that allegations of actual presence of the virus at insured property is not sufficient to allege direct physical loss of or damage to property. Distinguishing cases involving asbestos or pesticide contamination, the court explained that "HealthPartners has not plausibly alleged that something about its covered property has fundamentally changed in a way that cannot be undone." Further, the court emphasized that COVID-19 is a threat to people, not insured property.

Civil Authority Coverage: The court ruled that civil authority coverage was unavailable because (1) there was no physical loss of or damage to property located near HealthPartners’ facilities; and (2) the government orders only temporarily restricted the use of facilities and did not prohibit access.

Communicable Disease Coverage: The policy covered loss due to a suspension in business activities caused by “an authorized governmental agency enforcing any law or ordinance regulating communicable disease and that such portions of the location are declared uninhabitable due to the threat of the spread of communicable disease, prohibiting access to those portions of the location.” The court concluded that this provision was inapplicable because the government orders did not declare any insured property uninhabitable.

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