

## State And Federal Appellate Courts Continue To Rule In Insurers' Favor In Suits Seeking Coverage For Pandemic-Related Business Losses (Insurance Law Alert)

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In recent weeks, several state and federal appellate courts have continued the trend of dismissing policyholder suits seeking coverage for economic losses incurred in the wake of government orders relating to COVID-19.

State appellate courts in Florida, Illinois and Michigan have recently affirmed the dismissal of policyholders' claims for business losses incurred in the wake of the pandemic and its related government shutdown orders.

In *Commodore, Inc. v. Certain Underwriters at Lloyd's London*, 2022 WL 1481776 (Fla. Dist. Ct. App. May 11, 2022), a Florida appellate court upheld the dismissal of a restaurant's coverage suit against its commercial property insurer. The court emphasized the necessity of a "tangible" loss in order to satisfy the policy's "direct physical loss of or damage to" property requirement, rejecting the restaurant's contention that its inability to use its property for its intended purpose was sufficient to trigger coverage. Like many other courts across jurisdictions, the *Commodore* court also noted that the policy's "period of restoration" provision further supported its conclusion that loss of use alone cannot constitute loss or damage to property under the policy.

Two appellate courts in Illinois also rejected claims for COVID-19-related coverage. In *GPIF Crescent Court Hotel LLC v. Zurich Am. Ins. Co.*, No. 1-21-1335 (Ill. Ct. App. May 20, 2022), the court held that a hotel's implementation of plexiglass barriers, sanitizer stations and other elements were insufficient to satisfy the physical loss requirement, and in *Firebirds International, LLC v. Zurich Am. Ins. Co.*, No. 2020 CH 05360 (Ill. Ct. App. May 20, 2022), the court ruled that a contamination exclusion unambiguously barred coverage for the COVID-19-related business loss claims.

Michigan appellate courts have likewise concluded that business losses arising out of the COVID-19 virus itself or the related government orders do not give rise to coverage under business interruption or civil authority policy provisions. See *Massage Bliss, Inc. v. Farm Bureau General Ins. Co. of Michigan*, 2022 WL 1591925 (Mich. Ct. App. May 19, 2022); *Three Won Three, Corp. v. Property-Owners Ins. Co.*, 2022 WL 1594828 (Mich. Ct. App. May 19, 2022).

Employing similar reasoning, federal appellate courts in the Sixth, Eighth and Eleventh Circuits have also upheld dismissals of COVID-19-related coverage suits. *See Renaissance/The Park, LLC v. Cincinnati Ins. Co.*, 2022 WL 1596257 (6th Cir. May 20, 2022) (Kentucky law); *Glen R. Edwards, Inc. v. Travelers Cas. Ins.*, 2022 WL 1510818 (8th Cir. May 13, 2022) (Missouri law); *SA Palm Beach, LLC v. Certain Underwriters at Lloyd’s London*, 2022 WL 1421414 (11th Cir. May 5, 2022) (Florida law).

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