

Supreme Court Of Wisconsin Rules That Restaurants Are Not Entitled To Business Interruption Or Civil Authority Coverage For Pandemic-Related Losses (Insurance Law Alert)

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Reversing a lower court decision, the Supreme Court of Wisconsin ruled that allegations of government shutdown orders and the physical presence of the COVID-19 virus at insured property were insufficient to state the “physical loss of or damage to” property required by the policy. *Colectivo Coffee Roasters, Inc. v. Soc’y Ins.*, 2022 WI 36 (June 1, 2022).

Colectivo filed a class action complaint against Society seeking declaratory and injunctive relief and damages after the insurer denied coverage for lost income claims. A circuit court denied Society’s motion to dismiss, finding that the presence of the virus on insured property and the inability to use property for its intended purpose constituted allegations of physical loss or damage.

The Supreme Court of Wisconsin reversed, ruling that those allegations were insufficient to allege direct physical loss or damage. In particular, the court emphasized that viral presence does not alter property or require repair or remediation, and that while government orders might have restricted use of property, a loss of use is distinct from physical loss or damage. The court also rejected Colectivo’s civil authority coverage claim for the additional reason that the government orders did not prohibit access to insured property.

Colectivo also sought coverage under a contamination provision that covered losses arising from a suspension in operations and that “results in an action by a public health or governmental authority that prohibits access to the [property] or production of [Colectivo’s] product.”

Upholding Society’s denial under this provision, the court noted that even assuming that the presence of COVID-19 constitutes “contamination,” the coverage claim failed because the suspension in operations was caused by government orders rather than the virus itself.

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