

Reversing Trial Court, California Appellate Court Rules That Civil Authority Endorsement Provides Coverage For Business Losses (Insurance Law Alert)

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A California appellate court ruled that a business was entitled to coverage for COVID-19 pandemic-related losses under a civil authority endorsement and that a mold exclusion that referenced viruses did not apply. *Butter Nails and Waxing, Inc. v. Underwriters at Lloyd's, London*, No. B311455 (Cal. Ct. App. Aug. 25, 2022).

The endorsement provided coverage for loss “caused by interruption of business due to ‘Civil Authority Action’ that requires evacuation of the ‘described premises.’” The appellate court concluded that the undefined term “evacuation” encompassed the public health orders requiring non-essential businesses to close during the pandemic. Importantly, the court distinguished this endorsement from the more common civil authority coverage provisions, which require damage to nearby property, a prohibition on access to insured property and a causal connection between the civil authority order and the damaged property.

In addition, the court ruled that an exclusion, which applied to “organic pathogens” and defined that term to include “mold, fungus, bacteria or virus,” did not bar coverage. The court reasoned that the exclusion did not “conspicuously, plainly or clearly” exclude losses stemming from government orders addressing a viral pandemic and instead, was “more reasonably understood” to exclude losses stemming from mold or mildew. The court stated:

the inclusion of the term “virus” in the list of “organic pathogens” does not make the Mold Exclusion applicable to every claim stemming directly or indirectly from a virus. Rather, an insured would reasonably understand the exclusion to apply only where the claimed losses were related in some way to the presence of the “organic pathogen” on the business premises.

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