

## Vermont Supreme Court Rules That Trial Court Erred In Dismissing Complaint Against Reinsurers For COVID-19-Related Losses (Insurance Law Alert)

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Reversing a lower court decision, the Vermont Supreme Court ruled that a complaint sufficiently alleged “direct physical loss or damage to property” so as to withstand a motion to dismiss on the pleadings. *Huntington Ingalls Indus., Inc. v. Ace Am. Ins. Co.*, 2022 WL 4396475 (Vt. Sept. 23, 2022).

A military ship building company and its captive insurance subsidiary sued reinsurers seeking a declaratory judgment that they are entitled to coverage for property damage, business interruption and other losses suffered as a result of the pandemic and related government orders. The complaint alleged that there was direct physical loss or damage to property because the virus adhered to surfaces and lingered in the air at the insured property site. The complaint further alleged that the viral presence altered and impaired the functioning of the property, requiring physical, remedial alterations such as sanitization efforts, installation of barriers, and the redesign of space. A Vermont trial court dismissed the complaint, holding that there was no loss of or damage to property because the shipbuilding yards remained operational despite the alleged viral presence.

The Vermont Supreme Court reversed, ruling that under Vermont’s “extremely liberal” notice-pleading standards, the allegations were sufficient to withstand a motion to dismiss on the pleadings. In particular, the court held that allegations of a physical alteration to property based on the viral presence sufficiently pled “direct physical damage.” However, the court emphasized that mere allegations of loss of use due to a government order would not satisfy the “direct physical loss or damage” requirement. The court remanded the matter for factual development of the record, noting the possibility that “the science when fully presented may not support the conclusion that presence of a virus on a surface physically alters that surface in a distinct and demonstrable way.”

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