

## Placement Of Barriers And Mementos At Site Of George Floyd Incident Does Not Give Rise To Business Interruption Or Civil Authority Coverage For Property Owner, Says Minnesota Court (Insurance Law Alert)

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### Holding

A Minnesota district court dismissed a suit seeking business interruption and civil authority coverage under a property insurance policy, finding that the placement of cement barriers and mementos during periods of civil unrest did not constitute physical loss or damage to property or a prohibition on access to property. *Cup Foods Inc. v. Travelers Cas. Ins. Co. of Am.*, 2023 U.S. Dist. LEXIS 10711 (D. Minn. Jan. 23, 2023).

### Background

Following the killing of George Floyd in front of the policyholder's store, the City of Minneapolis placed cement barriers on nearby street corners. In addition, citizens placed mementos and other structures at those intersections. The policyholder sought coverage under its property policy's business interruption and civil authority provisions and thereafter sued Travelers for breach of contract.

### Decision

The court granted Travelers' motion to dismiss. The court ruled business interruption coverage was unavailable based on the absence of allegations of physical loss or damage to property. The court noted that while the objects "occupied physical space," there was no physical alteration to property because the objects could have been moved. As such, the court distinguished cases involving contamination by pesticides or asbestos fibers, explaining that those scenarios presented a physical alteration or contamination of property by a harmful substance.

Additionally, the court held that the policyholder's claim for civil authority coverage failed because there was no prohibition on access to property. The court explained that while the barriers might have restricted or hampered access to the policyholder's store, they did not altogether prohibit access. In so ruling, the court emphasized that customers were able to enter the intersections through gates or via sidewalks.

## Implications

The wave of pandemic-related coverage litigation has shed light on the allegations necessary to substantiate business interruption and civil authority coverage claims. The *Cup Foods* decision applies those same well established principles to scenarios involving an alleged loss in revenue related to civil unrest or protest. With respect to civil authority coverage claims, this decision aligns with those issued in the wake of the September 11 terrorist attack. See *730 Bienville Partners Ltd. v. Assurance Co. of Am.*, 67 F. App’x 248 (5th Cir. 2003) (FAA closure of airports after September 11 terrorist attacks did not “prohibit access” to policyholder’s hotels even though they significantly reduced hotel capacity); *54th St. Ltd. Partners LP v. Fid. & Guar. Ins. Co.*, 306 A.D.2d 67 (N.Y. App. Div. 1st Dep’t 2003) (diversion of traffic that adversely affected policyholder’s restaurant was not a denial of access for purposes of civil authority coverage).

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