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COVID-19 BUSINESS INTERRUPTION LITIGATION UPDATE

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Following the onset of the COVID-19 pandemic and the various versions of shutdown orders that followed from state governments in March 2020, many hospitality businesses filed business interruption claims with their respective carriers. While each claim is unique to the individual business' circumstances and policy coverage forms vary, the initial consensus from insurance companies is that the threat of COVID-19 spread does not constitute direct physical loss under first-party property insurance coverage. Given the severe financial ramifications for many businesses, some policyholders have chosen to proceed with litigation against their insurers.

While there are still several cases pending in various courts throughout the United States and the world, some initial trends have emerged from the cases. In general, the judgments handed down so far have favored insurers. Insurance carriers without a specific virus exclusion in their policy have declined claims on the basis that the threat of the virus is not a direct physical loss under the policy.

- A District of Columbia superior court judge rejected a restaurant owner's argument that COVID-19 and the associated governmental order satisfied the policy trigger of "direct physical loss" and issued a summary judgment in favor of the insurer.

- A U.S. district court judge in California granted a motion to dismiss in favor of Travelers Indemnity Company, stemming from a restaurant owner's lawsuit. Again, the judge dismissed the plaintiff's argument that the pandemic and related governmental orders met the definition of "direct physical loss."
- A Texas district court judge dismissed a case under similar arguments regarding "physical loss" and notably upheld the policy's exclusionary language regarding viruses.

From a policyholder perspective, there have been a few positive developments that are worthy of further monitoring:

- In November, a King County Super Court in Washington state denied a carrier's request to dismiss a business interruption claim, stating that the coverage language in question is ambiguous. Rather than being dismissed, this case will head to a discovery phase.
- A North Carolina superior court judge granted a partial summary judgment in favor of a plaintiff restaurant group against their insurer. The judge notably ruled that the definition of "physical loss" could be inferred to mean "resulting from a given cause." This summary judgment is under appeal currently but was a unique development in the argument regarding the meaning of "physical loss."

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- A United States district court judge in Missouri denied an insurer's motion to dismiss a salon plaintiff's argument under a summary judgment. The judge cited an adequate claim argument that established a relationship between COVID-19 and their business interruption. The court ruled the policyholder's argument created a question of fact about whether the salon owner sustained a "physical loss of" their premises as a result of the government orders to prevent the spread of COVID-19.

Parker, Smith & Feek will continue to monitor all state and federal jurisdictions for rulings that may change how coverage applies to COVID-19 business interruption losses. Some states have renewed COVID-19 social distancing mandates, limiting businesses' ability to operate. Parker, Smith & Feek views these recent orders as a continuation of the original shutdown orders issued in March 2020. No additional claim should be filed in connection with these recent developments. Those that have yet to file a claim for business interruption coverage related to COVID-19 state government orders should file their claim with the insurance carrier that insured your property in March 2020. When in doubt, please reach out to your Parker, Smith & Feek account team.

References and Resources

1. D.C. Judge Rules For Insurer, Dismisses Restaurants' Business Interruption Claims, <https://www.insurancejournal.com/news/national/2020/08/07/578232.htm>
2. Insurer Travelers Overcomes California Restaurant's COVID-19 Business Loss Claim, <https://www.insurancejournal.com/news/west/2020/08/31/580849.htm>
3. Defendants in Separate COVID-19 Business Interruption Suits Score Wins in Texas Courts, <https://www.insurancejournal.com/magazines/mag-features/2020/09/07/581181.htm>
4. MUTUAL OF ENUMCLAW INSURANCE COMPANY v. DAN PAULSON CONSTRUCTION INC, <https://caselaw.findlaw.com/wa-supreme-court/1166420.html>
5. Judge in North Carolina Favors Policyholders in COVID-19 Closure Lawsuit, <https://www.insurancejournal.com/news/southeast/2020/10/23/587710.htm>
6. Judge Allows Businesses' Lawsuits Against Insurer Over Coronavirus Losses, <https://www.insurancejournal.com/news/national/2020/08/12/578878.htm>