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Insurer wins in one of the first U.S. COVID-19 coverage rulings

The landmark ruling supports what insurers have argued since the start of the pandemic: COVID-19 does not cause 'physical damage.'

By Hannah Smith | July 07, 2020



The court explained that coverage under the policy is provided for actual loss of business income sustained while operations are suspended, and the suspension must be caused by the direct physical loss of or damage to property. (Photo: Shutterstock)

In one of the first coronavirus-related court rulings in the U.S., a Michigan Circuit Court Judge ruled in favor of the insurer in a case where restaurants were seeking insurance coverage due to COVID-19-related government shutdowns.

Gavrilides Management Company sued its insurer, Michigan Insurance, for revenue lost during the coronavirus lockdown under its insurance policy with business interruption coverage (<https://www.propertycasualty360.com/2020/05/20/insurance-speak-business-interruption-claims-covid-19/>). The company owns two central Michigan restaurants: the Soup Spoon Café and The Bistro.

Following Gavrilides' complaint, the insurer filed a motion for dismissal.

The court explained that coverage under the policy is provided for actual loss of business income sustained while operations are suspended, and the suspension must be caused by the direct physical loss of or damage to property. Further, Judge Joyce Draganchuk noted that direct physical loss of or damage to the property (<https://www.propertycasualty360.com/2020/03/27/what-is-physical-damage-and-does-covid-19-cause-any-414-175030/>) must be "something with material existence. . . that alters the physical integrity of the property." Judge Draganchuk also noted that the complaint did not allege any physical loss of or damage to the restaurants; instead, it claimed loss of business due to executive orders shutting down dining in the restaurant due to the global COVID-19 pandemic. She explained that the complaint stated explicitly that at no time did COVID-19 enter the restaurants.

Gavrilides argued that the policy's virus exclusion (<https://www.propertycasualty360.com/2020/06/26/navigating-the-microbe-and-pollution-exclusions-insurance-recovery-during-the-covid-19-pandemic-414-181957/>) was "vague." Still, the court rejected that argument, holding that the exclusion would apply even if direct physical loss or damage had been established. The court then observed that while government acts are covered, there once again must be direct physical loss or damage.

Finally, the court determined that no factual development could change the complaint's allegation that loss of access to the premises and not physical damage to the property was the cause of the damages.

Appropriately, this landmark ruling was handed down from the bench following a Zoom hearing. The hearing was later posted on YouTube (<https://www.youtube.com/watch?v=Dsy4pA5NoPw&feature=youtu.be>).

The case is Gavrilides Management Company v. Michigan Insurance Company.

Editor's Note: *This decision supports what the insurance industry has been saying from the very beginning of the COVID-19 pandemic, that there is no property damage caused when state and local governments prevent businesses from opening due to an increased risk of the transmission of the disease. As always, though, the Judge in this case carefully considered the facts in making her decision. For example, the insureds admitted in the complaint that COVID-19 at no time entered the restaurants. Representation for the insureds will surely take this into consideration when contemplating filing in the future.*

Hundreds of other businesses have sued their insurers for business interruption coverage citing similar arguments. Due to the pandemic, and the halted state of courts around the country, most of those cases are still pending. In one similar ruling in May out of New York, a judge also ruled in favor of the insurer of a magazine publisher.

At the time of this article, there was no written transcript of the decision.

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