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Illinois Appellate Court Denies Business Interruption Insurance Claim Related to COVID-19



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In the wake of the COVID-19 pandemic, many businesses across the country filed claims for business interruption coverage with their insurance carriers, most, if not all of which, were denied. Indeed, by the end of June 2021, a total of 1,937 business interruption lawsuits had been filed. In a recent opinion from *Lee v. State Farm Fire & Casualty Co.*, 2022 IL App (1st) 210205, the Illinois Appellate Court addresses the business interruption due to COVID-19 claim for the first time, ultimately denying coverage.

Following a series of executive orders by Governor J.B. Pritzker in March 2020, plaintiff Evanston Grill sought judgment that its business interruption claim was a "covered cause of loss" under the businessowners policy issued by defendant State Farm Fire and Casualty Co. Specifically, the executive orders forced all businesses in Illinois that offered food or beverages for on-premises consumption to suspend service, and all non-essential businesses and operations cease due to the "novel and rapidly spreading coronavirus."

Hyun Lee and his father, Jaewook Lee, who owned and operated the Evanston Grill, claim they suffered business income losses in excess of $100,000 in the month of April 2020 as compared to April 2019 and incurred extra expense from the business interruption caused by the shutdown. However, State Farm Fire & Casualty disagreed, finding there was no covered cause of loss because "there was no accidental direct physical loss to Covered Property to trigger coverage" and "the policy specifically excluded loss caused by enforcement of ordinance or law, virus, consequential losses and acts or decisions."

The court agreed with State Farm's assessment that the language of the policy requires accidental direct physical loss to covered property, not economic loss. However, in the policy, the term "physical loss" is undefined, so the court had to turn elsewhere for guidance. The court looked to an Illinois federal case *Sandy Point Dental, P.C. v. Cincinnati Insurance Co.*, which also dealt with a business interruption claim due to COVID-19, and wherein the policy provided for "coverage for income losses sustained on account of a suspension of operations caused by 'direct physical loss' to covered property." 20 F.4th 327, 329 (7th Cir. 2021). That case cited *Travelers Insurance Co. v. Eljer Manufacturing Inc.*, wherein the court held the term "'physical injury' unambiguously connotes an alteration in appearance, shape, color or in other material dimension." 197 Ill.2d 278, 312 (2001).

Several other courts have addressed this coverage issue as well, all ruling that economic loss does not fall under the physical loss definition necessary to trigger coverage. *See Bradley Hotel Corp. v. Aspen Specialty Insurance Co*., 19 F.4th 1002, 1007-08 (7th Cir. 2021); *Mudpie, Inc. v. Travelers Casualty Insurance Co*., 15 F.4th 885, 892 (9th Cir. 2021); *Santo's Italian Café LLC v. Acuity Insurance Co*., 15 F.4th 398, 401 (6th Cir. 2021); *Oral Surgeons, P.C. v. Cincinnati Insurance Co*., 2 F.4th 1141, 1144 (8th Cir. 2021).

While many businesses are still fighting for coverage due to the losses they incurred over COVID-19 shutdowns, those who argue their cases in Illinois are likely out of luck if their policies only cover "direct physical loss." The pandemic has changed the way many contracts and insurance policies are being drafted, and this is certainly something to consider going forward. As always, it is extremely important for insurance policy holders to read the language of the policy carefully.

If you have questions related to this article or need guidance regarding insurance policy coverage, please contact a member of Gould & Ratner's Policyholder Insurance Coverage Practice.