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Insurers Score a Win in First Substantive COVID-19 Business Interruption Decision

Since the side effects of COVID-19 have set in, insurance companies have seen over 500 lawsuits filed, claiming that business interruption coverage applies to losses caused by COVID-19 related restrictions. These suits generally claim that state-mandated closures are covered due to either the lack of a specific virus or pandemic exclusion or the policy's civil authority coverage provision.

Generally, insurers in such suits have taken the position that the virus has not caused physical damage to the insured's property and therefore there has been no trigger for coverage under the terms of the policies at issue. Insurers have also argued that, under the terms of the policies, there can be no coverage for business interruption because losses caused by viruses are specifically excluded.

On July 2, 2020, a judge in Ingham County, Michigan issued what appears to be the first substantive decision in a COVID-19 business interruption coverage case. In *Gavrilides Management Company, et al. v. Michigan Ins. Co.*, the insured argued that the virus exclusion did not apply because the loss of access was caused by the government orders, not by the virus. In addition, the insured argued that the loss of use of the property caused by the governmental orders constituted "direct physical loss" within the meaning of the policy. Applying Michigan law, the court rejected both arguments. Ruling from the bench on a motion to dismiss, the judge held that "direct physical loss or damage" requires more than mere loss of use or access. The judge then held that the virus exclusion unambiguously excluded coverage caused by the impact of COVID-19.

Since the arguments made by the insureds in *Gavrilides* track many of the arguments made in other cases, the case will undoubtedly be cited by insurers in cases throughout the country, as well as in the upcoming oral argument on July 30, 2020 before the Judicial Panel on Multidistrict Litigation in *In re: COVID-19 Business Interruption Protection Insurance Litigation*. Only time will tell whether other courts will follow suit in deciding

these issues or take an alternative approach.

Faegre Drinker's Coronavirus Resource Center is available to help you understand and assess the legal, regulatory and commercial implications of COVID-19.

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