Simpson Thacher

Insurance Law Alert

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Three federal district courts in New Jersey dismissed suits seeking coverage for business losses stemming from government shutdown orders issued in response to the COVID-19 pandemic. *Dezine Six, LLC v. Fitchburg Mutual Ins. Co.*, 2021 WL 1138146 (D.N.J. Mar. 25, 2021); *Benamax Inc. LLC v. Merchant Mutual Ins. Co.*, 2021 WL 1171633 (D.N.J. Mar. 29, 20210); *7th Inning Stretch LLC v. Arch Ins. Co.*, 2021 WL 1153147 (D.N.J. Mar. 26, 2021). (Click here for full article)

STB News Alerts

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Cyber Alert

Indiana Supreme Court Rules That Ransomware Losses May Be Subject To "Computer Fraud" Coverage

The Indiana Supreme Court reversed an appellate court decision that granted an insurer's summary judgment motion, holding that issues of fact existed as to whether the policyholder's ransomware payment was covered under a commercial policy's Computer Fraud provision. *G&G Oil Co. of Indiana, Inc. v. Continental Western Ins. Co.*, 165 N.E.3d 82 (Ind. 2021).

G&G Oil, the victim of a ransomware attack, paid approximately $35,000 to regain access to its computer systems. Continental denied coverage for the loss, noting that G&G Oil declined computer hacking coverage. G&G Oil sued Continental and the parties cross-moved for summary judgment. The trial court granted Continental's motion and an appellate court affirmed. (*See* April 2020 Alert). The Indiana Supreme Court reversed.

The Computer Fraud provision covered loss "resulting directly from the use of any computer to fraudulently cause a transfer of that property." The Indiana Supreme Court ruled that "fraudulently cause a transfer" was unambiguous and means "to obtain by trick." Applying this interpretation, the court held that factual disputes existed as to whether G&G Oil's computer systems were accessed "by trick." While G&G Oil alleged that a targeted spear-phishing email was the source of attack, the factual record was not conclusive as to the manner in which the hackers obtained access to the company's computer system. As such, the court ruled that summary judgment was inappropriate.

Furthermore, the court held that factual issues existed as to whether G&G Oil's losses "resulted directly from the use of a computer." The Indiana Supreme Court held that the trial court erred in ruling as a matter of law that G&G Oil's voluntary payment of ransom was an intervening cause that severed the causal chain of events. Instead, the Indiana Supreme Court held that "resulting directly" requires loss that resulted either "immediately or proximately without significant deviation from the use of a computer" and that G&G Oil's loss satisfied that standard.

D&O Alert

SEC Investigation Is Not A Covered Securities Claim, Says New York Court

A New York federal district court dismissed a policyholder's breach of contract suit against its insurer, finding that a Securities and Exchange Commission ("SEC") investigation was not a covered Securities Claim under the D&O policy. *Hertz Global Holdings, Inc. v. National Union Fire Ins. Co. of Pittsburgh*, 2021 WL 1198802 (S.D.N.Y. Mar. 30, 2021).

In 2013, a securities class action was filed against Hertz. In 2014, the SEC demanded documents relating to the company's financial statements and issued an order of investigation stating that the SEC had "information that tends to show" violations of securities laws. National Union agreed that the class action was a "Securities Claim" under the policy, but argued that the SEC investigation did not trigger coverage. Hertz ultimately settled with the SEC, agreeing to pay a $16 million penalty. Thereafter, Hertz sued National Union for breach of contract and sought a declaration that National Union was obligated to pay the expenses of the SEC investigation and settlement costs. The court granted National Union's motion to dismiss.

The policy covers "Securities Claims" against "Hertz the Organization," as well as "Claims against Individual Insureds." Securities Claim is defined as "a Claim, other than an investigation of an Organization . . . alleging violation of securities laws or regulations." The court ruled that this language unambiguously excludes the SEC investigation from coverage, rejecting Hertz's assertion that the investigation was a covered "administrative or regulatory proceeding."

The court also rejected Hertz's contention that the SEC order issued in connection with the investigation was a claim alleging a violation of securities laws. The court explained that language in the order stating that the SEC has information that tends to show multiple possible violations is not equivalent to an actual claim.

In addition, the court dismissed Hertz's argument that the costs of the SEC investigation should be included as part of the covered securities class action, noting that the SEC investigation did not arise from that action. Finally, the court deemed unpersuasive Hertz's assertion that the investigation was covered as a "claim" against Insured Individuals. The court emphasized that the investigation targeted Hertz as an organization, rather than any individual executives, and held that the cooperation of executives or their participation in tolling agreements is not equivalent to claims against those individuals.

Excess Alert

New York Appellate Court Rules That Follow Form Excess Insurer Is Not Bound By Prior Ruling Regarding Scope Of Coverage For Underlying Policy

Reversing a trial court decision, a New York appellate court ruled that an excess insurer is not bound by a prior judicial ruling finding coverage under the primary policy underlying the follow form excess policy. *Aspen Specialty Ins. Co. v. RLI Ins. Co., Inc.*, 2021 WL 1259156 (N.Y. App. Div. 1st Dep't Apr. 6, 2021).

The coverage litigation arose out of a bodily injury suit. In a separate case arising out of the same accident, a New York trial court ruled that Ironshore Indemnity, a primary insurer, owed coverage for the underlying claims based on an additional insured endorsement. In the present suit, Aspen sought a declaration that RLI, an excess insurer whose policy follows form to the Ironshore primary policy, is bound by that judicial determination. In response, RLI argued that it was entitled to relitigate the issue of whether Ironshore's policy provided additional insured coverage because RLI was not a party to the original action. A New York trial court ruled in Aspen's favor, and the appellate court reversed.

The appellate court ruled that RLI is not bound by the prior ruling under the law of the case doctrine because it was not a party to that action. For the same reason, the court declined to apply the doctrines of res judicata or collateral estoppel. Apsen argued that the prior judicial determination as to additional insured coverage under Ironshore's primary policy is binding on RLI because RLI's excess policy is a "follow form" policy that incorporates the terms of Ironshore's policy. Rejecting this argument, the court stated: "[a] follow-form policy was never intended to bind an excess carrier to a judicial interpretation of an underlying policy in a related but wholly non-controlling decision."

Notice Alert

Kentucky Appellate Court Declines To Apply Notice-Prejudice Rule To Claims Made Policy

Addressing a matter of first impression under Kentucky law, a Kentucky appellate court ruled that a notice provision in a claims-made-and-reported policy was unambiguous and was not subject to the notice-prejudice rule. *Darwin National Assurance Co. v. Kentucky State Univ.*, 2021 WL 1045716 (Ct. App. Ky. Mar. 19, 2021).

On September 2, 2015, former employees of a university sued for wrongful discharge, among other claims. The university sought coverage under a professional liability policy in effect from July 1, 2014 to July 1, 2015. The policy stated that a claim was deemed to have been made on the date that the university received notice of the claim, and required the university to give the insurer written notice

"as soon as possible" but no less than ninety days after the policy's end date. The university notified its insurer of the claim on October 2, 2015—93 days after the policy's end date. The insurer denied coverage based on untimely notice. In ensuing litigation, a Kentucky trial court granted the university's summary judgment motion. The trial court ruled that the notice provision was unambiguous, but that the notice-prejudice rule applied, and that notice was arguably timely under Kentucky's three-day mailbox rule. The appellate court reversed.

The appellate court agreed with the trial court that the ninety-day notice provision was unambiguous, but overturned the trial court's ruling as to the notice-prejudice rule. The court explained that imposing a prejudice requirement would "rewrite the Policy" and "grant KSU coverage it did not purchase." The appellate court also held that Kentucky's mailbox rule applies only to the service of certain court-related papers, not to notice requirements imposed by contract.

Coverage Alerts

Florida Appellate Court Addresses Application Of Separability And Limit Of Liability Clauses

Reversing a trial court decision, a Florida appellate court ruled that an insurance policy provided only $1 million in coverage (rather than $2 million) for a mid-air collision between two airplanes based on language in the policy's limit of liability provision. *Endurance Assurance Corp. v. Hodges*, 2021 WL 1115452 (Dist. Ct. App. Fla. Mar. 24, 2021).

A mid-air collision between two airplanes resulted in the death of four individuals. Their estates filed wrongful death claims against Dean Aviation, the flight school that owned both airplanes. Dean Aviation was insured by Endurance under a policy with a $1 million per-occurrence limit. The plaintiffs argued that the policy provided a total of $2 million in coverage, $1 million for each airplane involved in the accident. Plaintiffs relied on a separability clause that stated "[w]hen two or more Aircraft are insured under this Policy the terms of [the] Policy will apply separately to each." The trial court agreed and issued a declaratory judgment in plaintiffs' favor.

The appellate court reversed, ruling that the separability clause did not alter the $1 million limit on liability. In particular, the court relied on a "regardless" clause in the limit of liability provision which stated that "[r]egardless of the number of Insureds under this Policy, persons or organizations who sustain Bodily Injury or Property Damage," total liability is limited by the per-occurrence limits stated in the policy. The court noted that under Florida law, inclusion of "qualifying [regardless] clauses evidences an established custom in the insurance industry . . . where the intent is to limit liability coverage to a single amount, even though multiple insured vehicles are involved in an accident."

Texas Supreme Court Rules That Breach Of Insurance Policy Is Prerequisite To Insurance Code Claims

The Texas Supreme Court granted an insurer's petition for writ of mandamus, holding that a plaintiff must establish an insurer's liability under an insurance policy in order to seek recovery on Insurance Code claims and that bifurcation of the breach of contract and Insurance Code claims is necessary. *In re State Farm Mutual Auto. Ins. Co.*, 2021 WL 1045651 (Tex. Mar. 19, 2021).

The Plaintiffs, who held underinsured motorist coverage with State Farm, were involved in automobile accidents and received settlement payments from other drivers' insurers. Following those settlements, State Farm refused to pay additional amounts sought by the plaintiffs. The plaintiffs sued, alleging failure to settle in good faith and failure to provide a reasonable explanation for claim denial, in violation of the Texas Insurance Code. The plaintiffs did not assert any common law breach of contract claims, but sought damages in the amounts owed under their respective State Farm policies. State Farm moved to bifurcate trial, arguing that an initial trial to establish liability under the policies was a prerequisite to liability under the Insurance Code. The Texas Supreme Court agreed.

The court rejected the plaintiffs' assertion that they could recover UIM benefits as extra-contractual damages without first

establishing that they were legally entitled to recover under the policy if they were not asserting a breach of contract claim. The court explained that in order to seek damages under the Insurance Code, a party must either establish "a right to receive benefits under the policy," or "an injury independent of a right to benefits"—neither of which were established here.

In order to assert independent injuries, a party must establish that the insurer's violations "caused an injury apart from [its] failure to pay as much as the insureds believe they should have been paid under their UIM policies." The court deemed it irrelevant that plaintiffs' Insurance Code claims were not premised on a denial of benefits, and instead were based on failure to settle or provide reasonable explanation for denying the claims. The court explained: "the question is not whether the insured's *claims* are independent of the right to receive policy benefits. The question is whether the alleged *'damages* are truly independent of the insured's right to receive policy benefits.'" (Emphasis in original). Because the only damages sought by plaintiffs were predicated on State Farm's contractual obligation under the policies, the court ruled that "plaintiffs' 'independent injury'" theory failed.

Having concluded that plaintiffs must establish their right to policy benefits in order to recover under their Insurance Code claims, the court further held that State Farm was entitled to bifurcation of trial. The court explained that bifurcation was warranted because it preserves judicial resources, eliminates conflicts relating to the admissibility of evidence, and avoids unnecessary prejudice to the insurer.

Duty To Defend Alert

Texas Supreme Court To Consider Exception To Eight Corners Rule

The Texas Supreme Court agreed to consider whether courts may use certain information outside the allegations in the complaint and the insurance policy in evaluating an insurer's duty to defend. *BITCO General Ins. Corp. v. Monroe Guaranty Ins. Co.*, No. 19-51012 (Tex. Mar. 19, 2021).

The coverage dispute arose out of a negligent lawsuit against a drilling company. The company tendered defense of the suit to two insurers, one of which agreed to defend. The other insurer refused, arguing it had no duty to defend because the parties stipulated that the alleged property damage occurred outside the policy's coverage period. The drilling company sued both insurers, seeking a declaration that they were obligated to defend the suit. A Texas district court granted the drilling company's summary judgment motion. On appeal, the Fifth Circuit asked the Texas Supreme Court to address two issues of law. *Bitco Gen. Ins. Corp. v. Monroe Guaranty Ins. Co.*, 2021 WL 955155 (5th Cir. Mar. 12, 2021).

First, the Fifth Circuit asked the Texas Supreme Court to address whether the narrow exceptions to the eight corners rule, as set forth in *Northfield Ins. Co. v. Loving Home Care, Inc.*, 363 F.3d 523 (5th Cir. 2004), are permissible under Texas law. In *Northfield*, the Fifth Circuit agreed to consider extrinsic evidence in evaluating an insurer's duty to defend "when it is initially impossible to discern whether coverage is potentially

implicated," and "when the extrinsic evidence goes solely to a fundamental issue of coverage which does not overlap with the merits of or engage the truth or falsity of any facts alleged in the underlying case."

Second, the court sought guidance as to whether it is permissible for a court to consider evidence of a stipulated date related to the underlying occurrence to determine an insurer's duty to defend. The Fifth Circuit noted that "a definitive answer to this question is important because ascertaining the date of an occurrence is a frequently encountered 'gap' in third party pleadings," and "the omitted date can be key to the question of the duty to defend."

Last month, the Texas Supreme Court accepted certification. We will keep you posted on developments in this matter.

Reinsurance Alert

California Court Refuses To Dismiss Claims Against Entities That Acquired Reinsurer

A California federal district court refused to dismiss claims alleging that companies that acquired a reinsurer intentionally interfered with the reinsurance contract between the acquired reinsurer and the plaintiff insurance companies and induced a breach of that contract. *California Capital Ins. Co. v. Enstar Holdings US LLC*, 2021 WL 1406028 (C.D. Cal. Apr. 14, 2021).

Plaintiff insurance companies alleged that they entered into a reinsurance treaty with non-party Maiden Reinsurance and that for several years, Maiden fulfilled its contractual obligations under the treaty. However, plaintiffs claimed that when the defendant companies acquired Maiden, they interfered with Maiden's performance under the treaty. In particular, plaintiffs allege that the defendants fabricated coverage disputes and directed Maiden to refuse payment for losses and to demand the return of funds for payments already made. Defendants moved to dismiss the complaint.

The court denied the motion, finding that the complaint sufficiently alleged claims for intentional interference with contractual relations and inducing breach of contract. The court noted that while plaintiffs "do not allege exactly how Defendants directed Maiden to breach the Treaty," the complaint nonetheless met the federal notice pleading standards so as to survive dismissal. Additionally, the court refused to dismiss the complaint on the ground that defendants were agents of Maiden and thus could not be held liable for interference with or inducing breach of the reinsurance treaty. Because the court declined to take judicial notice of the agreements between Maiden and the defendants, those documents could not be used to support defendants' agency argument.

Contribution Alert

Rejecting Tolling Argument, California Court Rules That Insurer's Contribution Claim Is Time Barred

A California federal district court dismissed an insurer's equitable contribution claim against another insurer, finding that the claim was time barred by the applicable statute of limitations. *Lexington Ins. Co. v. QBE Specialty Ins. Co.*, 2021 WL 735665 (N.D. Cal. Feb. 25, 2021).

A policyholder tendered defense of a construction defect suit to Lexington Insurance Company. The policyholder opted not to seek coverage from another insurer, QBE, because it wished to preserve limits on the QBE policy for future claims and because the QBE policy included a deductible. Lexington agreed to defend and ultimately settled the suit. Thereafter, Lexington made several requests to QBE for contribution of defense and indemnity expenses, which QBE refused. More than two years after the

underlying settlement, Lexington filed an action for equitable contribution.

The court dismissed the action, ruling that it was time-barred under California's two-year statute of limitations for equitable contribution claims. Under California law, the limitation period for an equitable contribution claim accrues when the non-contributing insurer first refuses the demand to contribute, but is tolled until all defense obligations in the underlying action are terminated by final judgment. Applying this standard, the court held that Lexington's claim against QBE accrued in 2016, when QBE refused to participate in the policyholder's defense—nearly three years before Lexington filed suit. Further, the court held that the statute of limitations was tolled only from the date of underlying settlement, which was more than two years before Lexington filed suit. The court rejected Lexington's assertion that the statute of limitations is tolled until the date of last underlying payment for which the insurer seeks contribution. The court noted that the argument had "some support" in California case law, but was not binding by persuasive authority.

QBE also argued that dismissal was warranted based on a "selective tender" rule, which recognizes a policyholder's right to select an insurer for tender. The court declined to address the merits of the "selective tender" argument based on its finding that dismissal was warranted on statute of limitations grounds, but noted that it would be "extremely reluctant" to apply the rule based on its apparent inconsistency with California's recognition of equitable contribution claims among insurers. The court stated: "The right to seek equitable contribution is predicated on the commonsense principle that where multiple insurers or indemnitors share equal contractual liability . . . the selection of which indemnitor is to bear the loss should not be left to the often arbitrary choice of the loss claimant." (Citations omitted).

Climate Change Alert

Cities Cannot Use State Tort Law To Sue Companies For Climate Change In Federal Court, Says Second Circuit

The Second Circuit ruled that municipalities may not use state tort law to hold multi-national companies liable in federal court for climate change-related costs. *City of New York v. Chevron Corp.*, 2021 WL 1216541 (2d Cir. Apr. 1, 2021). As such, the court affirmed the dismissal of a public nuisance lawsuit brought by the City of New York against five oil companies to recover damages allegedly caused by the companies' global fossil fuel operations. The Second Circuit held that federal common law, rather than state law, governs claims arising out of global warming, which is a "uniquely international problem of national concern" that implicates foreign policy. Additionally, the court ruled that federal common law is displaced by the Clean Air Act, which grants the Environmental Protection Agency (rather than federal courts) the authority to regulate domestic emissions. Finally, the Court held even with respect to claims that are not subject to the Clean Air Act (*e.g.*, claims arising out of non-domestic emissions), judicial caution and foreign policy concerns mitigated against allowing such claims to proceed under federal common law.

As the court noted, the Ninth Circuit similarly affirmed dismissal of a public nuisance suit seeking damages for property damage allegedly caused by greenhouse gases emitted by gas, oil and utility companies. *Kivalina v. ExxonMobil Corp.*, 2012 WL 4215921 (9th Cir. Sept. 21, 2012) (*see* November 2012 Alert).

Few courts have addressed whether climate change claims, if allowed to proceed, would implicate coverage under general liability policies. As discussed in our May 2012 and October 2011 Alerts, the Virginia Supreme Court ruled that an insurer owed no duty to defend or indemnify global warming-related claims, finding that the underlying complaint did not allege a covered "occurrence." *AES Corp. v. Steadfast Ins. Co.*, 2012 WL 1377054 (Va. Apr. 20, 2012).

COVID-19 Alerts

The Eighth Circuit and the Ohio Supreme Court are poised to rule on whether property insurers are obligated to indemnify business losses arising out of state-mandated closures enacted to slow the spread of COVID-19. This month, the Eighth Circuit heard oral arguments in *Oral Surgeons PC v. Cincinnati Ins. Co.*, No. 20-3211 (8th Cir. argued Apr. 14, 2021), in which an Iowa dental clinic seeks business interruption coverage for pandemic-related losses. And in *Neuro-Communication Services Inc. v. Cincinnati Ins. Co.*, 2021 WL 274318 (Ohio Apr. 14, 2021), the Ohio Supreme Court agreed to accept the certified question of whether the existence of the COVID-19 virus constitutes direct physical loss or damage under a commercial property policy. Other noteworthy rulings addressing the scope of coverage for COVID-19-related claims are discussed below.

Pennsylvania Court Rules That Dental Practice Is Entitled To Coverage For COVID-19-Related Losses

A Pennsylvania trial court granted a dental practice's summary judgment motion, finding that it was entitled to coverage under Business Income, Extra Expense and Civil Authority coverage provisions, and that several policy exclusions did not apply. *Timothy A. Ungarean, DMD v. CAN*, 2021 WL 1164836 (Pa. Ct. Comm. Pl. Allegheny Cnty. Mar. 22, 2021).

The policyholder alleged that as a result of COVID-19 and state shutdown orders, he was forced to cease most of his business operations, resulting in lost income. The court ruled that the policyholder was entitled to coverage for those losses, rejecting numerous arguments asserted by the insurer.

First, the court found that the policyholder suffered "direct physical loss of or damage to property," rejecting the contention that some physical alteration of or demonstrable harm to property is required. The court held that "loss" reasonably encompasses the loss of use of property. The court further found that the loss of use of property was "direct" and "physical" because the spread of COVID-19 and related government orders had a "close logical, causal and/or consequential relationship to the ways in which Plaintiff materially utilized its property and physical space."

Second, the court held that the policy's "period of restoration" clause did not indicate that the contract required actual tangible damage in order to trigger Business Income and Extra Expense coverage. The court reasoned that restoration could include changes relating to partitions, ventilation, sanitization or expansion of existing space.

Third, the court concluded that the policyholder was entitled to Civil Authority coverage, holding that the phrase "prohibits access to the described premises" did not require a complete prohibition of access. The court stated:

> Although Plaintiff's business (a dental practice) was technically permitted to remain open to conduct certain limited emergency procedures, this does not change the fact that an action of civil authority effectively prevented, or forbade by authority, citizens of the Commonwealth from accessing Plaintiff's business in any meaningful way for normal, non-emergency procedures; procedures that likely yield a significant portion of Plaintiff's business income.

Finally, the court ruled that coverage was not barred by exclusions for Contamination, Fungi, Wet Rot, Dry Rot and Microbes, or Consequential Loss. The court noted that while a contamination exclusion "might, at times, cover viruses when viruses actually contaminate property," it did not bar coverage where, as here, the losses were caused by the risk of person-to-person transmission as well as state orders issued to mitigate that spread, separate and apart from any contamination of property. With respect to the Consequential

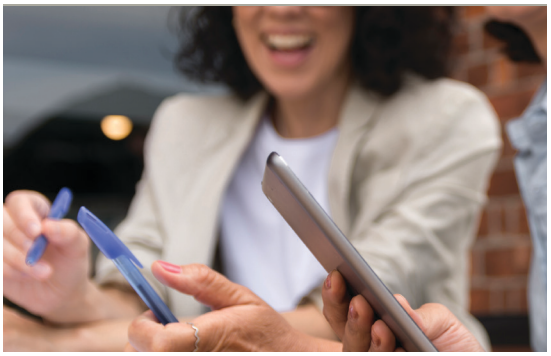
Loss exclusion, the court deemed it unenforceable, finding that its application "would effectively eliminate coverage for any kind of loss and/or damage caused by any covered peril, which closes Plaintiff's business while it is being repaired."

Pennsylvania Court Dismisses Class Action Suits Seeking Business Interruption Coverage

A Pennsylvania federal district court dismissed four class action suits seeking coverage for COVID-19-related losses, finding that the insured properties did not incur any "direct physical loss." *Chester County Sports Arena v. Cincinnati Specialty Underwriters Ins. Co.*, 2021 WL 1200444 (E.D. Pa. Mar. 30, 2021).

The plaintiff businesses held "all risk" property policies that included identical coverage provisions for Business Income, Extended Business Income, Extra Expense and Civil Authority. Cincinnati denied coverage for the businesses' pandemic-related claims, and in ensuing litigation, moved to dismiss the policyholders' complaints. The court granted the insurer's motion, finding that the businesses failed to allege any "direct physical loss," as required by the policy. The court stated:

> Government orders in response to a virus simply do not fit this physicality requirement. Under Pennsylvania law, clear and unambiguous terms (like "direct physical loss") must be given their plain meaning, and when there is no alteration to a physical structure, Third Circuit precedent points in the direction of finding no physical loss. . . . A contrary holding would require expanding "direct physical loss" beyond its plain meaning to encompass purely economic loss.



In so ruling, the court noted the "plethora of similar cases in district courts across the country" that have also dismissed coverage suits involving comparable policy provisions and factual allegations.

In Trio Of Rulings, New Jersey Federal District Courts Dismiss COVID-19-Related Coverage Suits

Last month, three federal district courts in New Jersey dismissed suits seeking coverage for business losses stemming from government shutdown orders issued in response to the COVID-19 pandemic.

In *Dezine Six, LLC v. Fitchburg Mutual Ins. Co.*, 2021 WL 1138146 (D.N.J. Mar. 25, 2021), the court ruled that a virus exclusion precluded coverage for a hair salon's COVID-19 related losses. The court rejected the policyholder's assertion that the exclusion did not apply to coverage under the Business Income, Extra Expense and Civil Authority coverage provisions because those provisions referred to "expenses" whereas the virus exclusion referred to "loss or damage." The court also rejected a regulatory estoppel argument, noting that the policyholder failed to allege that the insurer made misrepresentations to insurance regulators with respect to the virus exclusion.

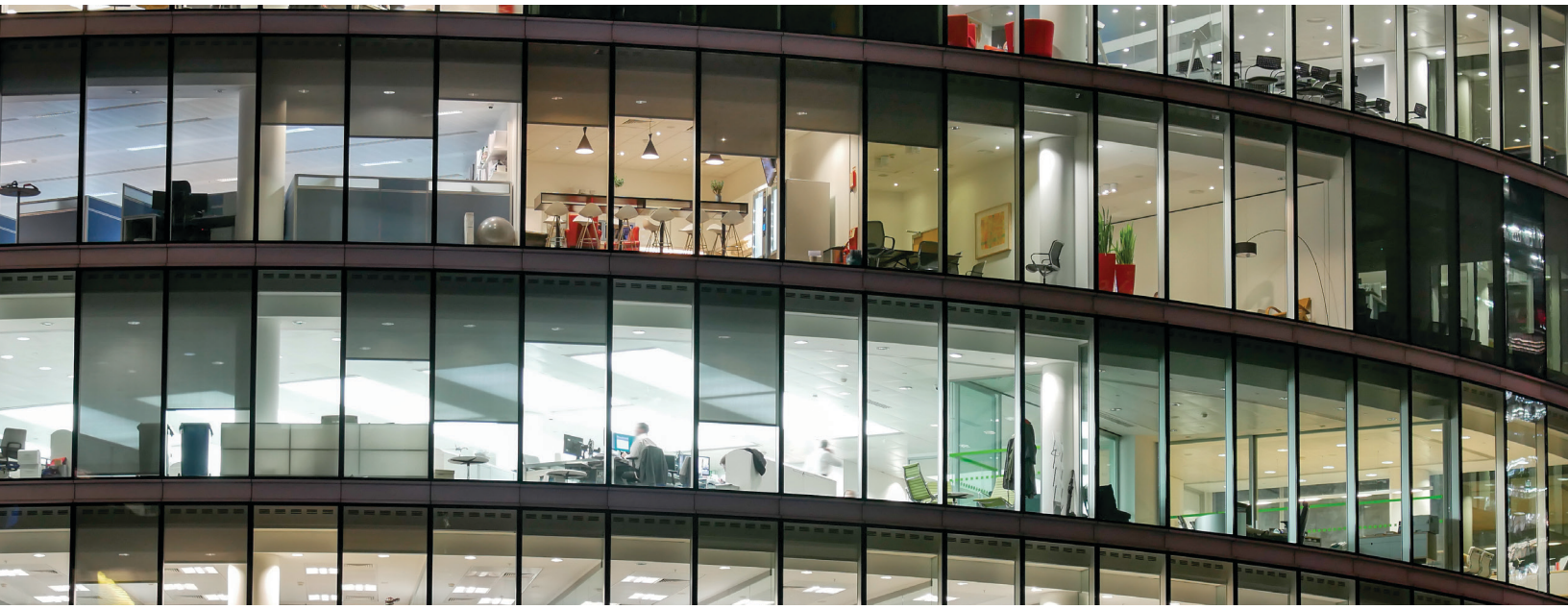
Applying similar reasoning and enforcing a virus exclusion, another New Jersey federal district court dismissed a food retailer's coverage suit in *Benamax Inc. LLC v. Merchant Mutual Ins. Co.*, 2021 WL 1171633 (D.N.J. Mar. 29, 20210). The court concluded that the exclusion "is a complete defense to coverage compelling the dismissal of Plaintiff's complaint on this ground alone."

In *7th Inning Stretch LLC v. Arch Ins. Co.*, 2021 WL 1153147 (D.N.J. Mar. 26, 2021), the court dismissed a professional baseball organization's coverage suit, finding that allegations that government actions forced the cessation of minor league baseball, resulting in lost income, did not satisfy the "direct physical loss of or damage to property" requirement. The court held that allegations that it was "statistically certain" that the virus was present on insured property were not sufficient to trigger coverage, stating that "the presence of a virus that harms humans but does not physically alter structures does not constitute coverable property loss or damage."

STB News Alerts

Simpson Thacher's Insurance Practice again received the National Practice Group of the Year award at *Euromoney*'s Benchmark Litigation 2021 Awards virtual ceremony. This is the eighth time the Firm has received the Insurance Firm of the Year award. Mary Beth Forshaw was also recognized as Insurance Litigator of the Year, which she also won in 2016. The Benchmark Litigation Awards honor firms and attorneys that have emerged as leaders in their particular areas of law over the past year.

Josh Polster has been named to *Law360*'s 2021 Insurance Editorial Advisory Board. The Advisory Board is responsible for providing feedback to the publication about its news coverage, as well as expanding the pool of potential industry experts and collecting insights on how to best shape future content.



Simpson Thacher

Simpson Thacher has been an international leader in the practice of insurance and reinsurance law for more than a quarter of a century. Our insurance litigation team practices worldwide.

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