

North Carolina Litigation Update

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A Coverage Win in North Carolina: Covid-19 Business Interruption Claims Require “Direct Physical Loss”

On July 5, 2022, the North Carolina Court of Appeals reversed a Durham County Superior Court ruling in *North State Deli, LLC v. The Cincinnati Ins. Co.* The Superior Court’s ruling, which was entered on October 9, 2020 by Judge Orlando Hudson, granted a group of sixteen restaurants summary judgment, proclaiming that the restaurants sustained direct, physical loss as a result of the Covid-19 pandemic, and as such, were entitled to coverage for loss of business income under a Cincinnati Insurance Company commercial general liability (CGL) policy. In coming to its decision, the Superior Court found that various governmental orders in the State of North Carolina restricted restaurant operations to carry-out/take-out and delivery operations only, which caused the restaurants to shut their doors to in-person patronage, and resulted in “loss of use and access to” the restaurants. This decision was an outlier compared to what has been seen around the country.

The Court of Appeals disagreed with the Superior Court’s ruling and reversed. The Court of Appeals noted that in order to qualify for coverage for business income losses, the loss must be “caused by direct physical loss of or damage to property at the premises” as required by the policy. The Court pointed to its 1997 decision in *Harrys Cadillac-Pontiac-GMC Truck Co. v. Motors Ins. Co.*, 126 N.C. App. 698, 486 S.E.2d 294 (1997), wherein the Court found that a snowstorm physically blocking the entrance of the insured car dealership did not result in physical damage or loss at the dealership, and as such, did not qualify for business interruption/business income coverage under the policy.

The Court of Appeals noted that other courts in the Fourth Circuit have held that governmental order for Covid-19 did not cause direct physical loss or damage to an insured property, and as such, there was no coverage for business interruption/business income losses. *See Fs Food Group LLC v. Cincinnati Ins. Co.*, 2022 US Dist. LEXIS 22598 (W.D.N.C. Feb. 8, 2022); *Summit Hosp. Grp., Ltd. v. Cincinnati Ins. Co.*, 2021 U.S. Dist. LEXIS 40613 (E.D.N.C. Mar. 4, 2021).

The Court ultimately held that while the Covid-19 governmental orders may have limited the restaurant’s operations, the orders did not result in direct physical loss or damage to the restaurants. As such, the Court reversed the Superior Court’s summary judgment ruling and directed the Superior Court to enter summary judgment in favor of Cincinnati Insurance Company.

This decision falls in line with a majority of courts’ decisions across the country related to Covid-19 business interruption claims and provides insurers with certainty handling similar claims in North Carolina in the future.

Click [here](#) for more information.

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