



News

Hinshaw's Scott Seaman Discusses Current State of Play in National COVID-19 Coverage Litigation

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Hinshaw attorney Scott Seaman, a Chicago-based partner and co-chair of the global Insurance Services Practice Group, was recently quoted in *Law360* regarding the current state of play in the more than 1,500 COVID-19 business interruptions coverage lawsuits that have been filed in state and federal courts across the country. To date, insurers have prevailed in the majority of the trial court rulings on motions to dismiss and motions for summary judgment. Most courts have ruled that the COVID-19 claims do not involve "direct physical loss or injury." These decisions generally have applied the plain meaning and time tested requirement of "direct physical loss or injury" and readily concluded COVID-19 claims cannot and do not meet this requirement regardless of whether or not the policyholder alleges the presence of the virus on the premises. The minority of decisions that have allowed claims to survive a motion to dismiss either do so to permit discovery or entertain strained constructions proffered by policyholders.

Many decisions have taken a belt and suspenders approach in cases in which the policies contain a virus exclusion and have also ruled the exclusion bars coverage.

Where claims survive motions to dismiss, other issues such as the restoration period – which vary but often will exceed the period the virus is capable of living – as well as damage and number of losses/occurrences issues may be subject to discovery. Some COVID-19 business interruption claims may intersect with other events such as last summer's riots and this winter's storms presenting interesting issues, presenting interesting issues.

The pace of filings has slowed. Many policyholders are awaiting trial court or appellate court rulings to determine whether and where to file. As most property policies contain suit limitation periods (often 12 or 24 months), the flow of claims is not expected to continue for an unlimited period of time.

In the *Law360* article, Seaman is quoted as saying that "[w]e would expect insurers to fare well on appeal overall both with respect to the issue of absence of direct physical loss or injury and with respect to virus exclusions."

Even if policyholders put forth evidence purporting to show the novel coronavirus was on their premises and survived for a period of time, that may still not be enough for them to ultimately prevail. "Such a showing does not mean there was direct physical loss or damage. Further, the virus is short-lived and will die quickly on its own and instantly upon even a superficial cleaning."

Attorneys

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[Read the full article](#) (*subscription may be required*)

"1 Year In, Policyholders See Hope In Virus Coverage Battles" was published by *Law360*, March 8, 2021.