

Loss of Business Income Coverage Update

July 15, 2020
The e-POST

Loss of Business Income – Circuit Court of the County of Ingham (Michigan)

Gavrilides Mgmt. Co. LLC v. Michigan Ins. Co.

No. 20-258CB-C30 (Ingham Circuit Court July 1, 2020)

A Michigan trial court dismissed an insured's suit for loss of business income as a result of Gov. Gretchen Whitmer's Stay Home, Stay Safe Order due to the COVID-19 pandemic. The insured, Gavrilides Management Co. LLC (Gavrilides), filed suit against its insurer, Michigan Insurance Company (Michigan Insurance), seeking \$650,000 as alleged losses sustained after the Stay Home, Stay Safe Order limited Gavrilides' restaurant operations to take-out and delivery only.

In ruling from the bench via Zoom, the trial court held that the meaning of loss of business income from "direct physical loss of or damage to" the insured property is clear. The "direct physical loss or damage" must be "something with material existence, something that is tangible, something ... that alters the physical integrity of the property." In so holding, the trial court rejected Gavrilides' argument that the "physical loss" requirement can be met as a result of customers' restricted access to the insured property as "simply nonsense."

The trial court held that Gavrilides' loss of business income was not a result of a tangible loss to its property. Rather, the allegation of loss of income was "due to an executive order shutting down the restaurants for dining ... due to the COVID-19 threat ... [T]he complaint also states that at no time has COVID-19 entered the Soup Spoon or the Bistro through an employee or customer ... so there are simply no allegations of direct physical loss of or damage to the property."

Accordingly, the trial court ruled, as a matter of law, Gavrilides' allegations could not be sustained and granted Michigan Insurance's motion for summary disposition.

Plunkett Cooney's insurance coverage update, The e-Post, is published bi-monthly via email. To receive your copy when it is issued, simply email - subscribe@plunkettcooney.com. Please indicate in the email that you would like to be added to the e-POST marketing list.