

Case of First Impression Rules No Coverage for COVID Business Interruption Claim Because No Direct Physical Loss

By: Anthony L. Miscioscia

Insurance Coverage and Bad Faith Alert

7.3.20

Michigan Circuit Court Judge Joyce Draganchuk (Ingham County) granted the insurer's motion for summary disposition in *Gavrilides Management Company v. Michigan Insurance Company*. At issue was coverage for restaurants that were shuttered by COVID-19-related government orders. The court concluded that no coverage is owed.

Fittingly, *Gavrilides* – now the *Marbury v. Madison* of coronavirus business interruption coverage – was handed down from the bench following a Zoom hearing.

In a case of first impression decided from the bench on July 1, the court explained that coverage is provided for actual loss of business income sustained during a suspension of operations. The suspension must be caused by direct physical loss of or damage to property. With this as the framework, the Judge concluded that direct physical loss of or damage to the property "has to be something with material existence. Something that is tangible. Something . . . that alters the physical integrity of property."

The Judge emphasized that the complaint did not allege any physical loss of or damage to the restaurants. Rather, it merely alleged loss of business due to executive orders shutting down dining in the restaurant due to the COVID-19 threat. The Judge noted that the complaint states that at no time has COVID-19 entered the restaurants through an employee or patron.

The court further rejected the insured's argument that the Virus Exclusion is "vague." The court held that the virus exclusion would apply even if direct physical loss or damage existed.

The court also observed that, while government acts are covered, they must result in direct physical loss or damage. But there was no direct physical loss or damage alleged.

Lastly, the court concluded that the insured could not amend its complaint, as there is no factual development that could change that the complaint alleges loss of access to the premises, and not direct physical damage to property, as required under the policy.

If you have any questions or need more information, contact Anthony L. Miscioscia (misciosciaa@whiteandwilliams.com; 215.864.6356).

As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.