



Featured News

EMPLOYMENT ALERT
INSURANCE PROVIDES NO RELIEF FOR COVID CAUSED BUSINESS LOSSES

A disappointing trend that emerged during COVID was the insurance industry's consistent denial of claims by businesses seeking coverage for damages and losses that the pandemic caused. The judiciary has rejected almost all theories of coverage. The Ninth Circuit recently continued the trend by issuing a trio of opinions (two of which are deemed "unpublished") supporting insurance companies' denial of such claims. The opinions are:

Mudpie, Inc. v. Travelers Cas. Ins. Co. of Am., 2021 U.S. App. LEXIS 29624 (9th Cir. October 1, 2021): the insured had a comprehensive commercial liability and property insurance policy. The Policy paid benefits for "direct physical loss or damage" to the insured's property. The Policy also paid benefits for loss of business income, if caused by "direct physical loss or damage." The Policy included a "virus exclusion" that excluded losses "caused by or resulting from any virus . . ." The insured argued that California's "stay at home" orders caused it to suffer business losses by preventing the insured from operating its business. The Ninth Circuit upheld the insurer's denial of the claim, holding that the claim did not constitute "direct physical loss or damage" under California insurance law because there was no "distinct, demonstrable, physical alteration of the property." Although not necessary to the opinion, the Court went on to hold that the "virus exclusion" also barred the insured from recovering under the Policy. The Court rejected the insured's argument that it was the stay at home orders, rather than the virus, that caused the business loss. Instead, the Court found that the exclusion applied because the virus prompted the stay at home orders.

Chattanooga Prof'l Baseball LLC v. Nat'l Cas. Co., 2021 U.S. App. LEXIS 29632 (9th Cir. October 1, 2021) (unpublished): the Appellants were several minor league baseball teams located in ten (10) states that sued the insurer jointly alleging breach of insurance contract. The insurer denied the teams' claims for business losses, relying on the "virus exclusion." Although the Appellants filed suit in Arizona, the Court looked to the law of the states where each team was located. It held that, in each of these states, COVID was the "efficient proximate cause" of the claimed loss, and therefore the insureds were not entitled to coverage. The Court also rejected the insureds' estoppel argument, holding that estoppel does not expand the scope of coverage. The Court did find that the policy exclusion for losses caused by "suspension, lapse or cancellation of any contract" did not apply, but this did not change the outcome.

Selane Products, Inc. v. Continental Casualty Co., 2021 U.S. App. LEXIS 29633 (9th Cir. October 1, 2021) (unpublished): the insureds alleged that state and local orders resulting from COVID caused them to shut down their businesses, and submitted claims to the

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insurer under their business insurance policies. The Court held that, in order to establish coverage, the insureds had to demonstrate some “direct physical loss of or damage to” their property. Because the insureds did not allege that COVID was “present” on their property, and did not allege that the stay at home orders caused any “physical damage” to their property, the Court held that the insureds were not entitled to coverage. The Court also held that the Policy’s “Civil Authority” endorsement did not apply, because this endorsement also required a showing of physical loss or damage that led to a civil authority action that prevented access to the property.

Takeaway – under the Courts’ interpretation of insurance law, obtaining coverage of losses caused by or relating to COVID is difficult. Before submitting a claim, business owners should consult with counsel regarding which policy provisions might afford coverage, and regarding the potential applicability of any policy exclusions. It is clear that insurers will not cover COVID related losses in California under policies that require a showing of “physical loss or damage to property.”



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