

Texas Federal Court Rules No Coverage for COVID-19 Losses

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On August 13, 2020, a Texas federal court granted insurer State Farm's motion to dismiss, finding that there was no coverage for plaintiffs' claims for business interruption losses resulting from the COVID-19 pandemic. In *Diesel Barbershop LLC, et al., v. State Farm Lloyds*, Case No. 5:20-cv-461-DAE, Senior United States District Judge David Alan Ezra found for State Farm, holding that COVID-19 does not cause direct physical damage to property. The property policies at issue "insure[d] for accidental direct physical loss to Covered Property" and contained a virus exclusion.

Arguments

State Farm argued the following:

- For business income coverage to apply, the policies explicitly required (1) an accidental direct physical loss to the insured property and (2) that the loss is not excluded.
- Plaintiffs failed to properly plead direct physical loss to the properties as they argued that the closure orders were the reason for the business interruption claim and failed to show that the properties were tangibly "damaged."
- Plaintiffs failed to overcome the virus exclusion hurdle.

Additionally, the plaintiffs asserted the following:

- The language in the policies did not require a tangible and complete physical loss to the properties, but rather allowed for a partial loss to the properties, which includes the loss of use of the properties due to the closure orders restricting use of the properties.
- It was not COVID-19 within the plaintiffs' properties that caused the loss directly, but rather the closure orders that caused the direct physical loss and thus the virus exclusion should not apply.

- The closure orders were issued to protect public health and welfare, and the plaintiffs' claims thus fall under the Civil Authority provision within the policies.

Ruling

Judge Ezra first held that the plaintiffs failed to plead direct physical loss. Second, Judge Ezra held that the virus exclusion barred plaintiffs' claims. Judge Ezra reasoned that the language in the lead-in of the virus exclusion expressly stated that State Farm does not insure for a loss regardless of "whether other causes acted concurrently or in any sequence within the excluded event to produce the loss." Lastly, Judge Ezra held that the Civil Authority provision in the policy was not triggered.

In so ruling, Judge Ezra indicated that "while there is no doubt that the COVID-19 crisis severely affected Plaintiffs' businesses, State Farm cannot be held liable to pay business interruption insurance on these claims as there was no direct physical loss, and even if there were direct physical loss, the Virus Exclusion applies to bar Plaintiffs' claims." Judge Ezra further stated that "given the plain language of the insurance contract between the parties, the Court cannot deviate from this finding without in effect re-writing the Policies in question."

[Read the Order.](#)

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