

## **Insurer Suggests Some Viruses Can Knock Down Buildings, Just Not Covid**

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Insurers like to trumpet litigation wins on COVID business interruption coverage, but it's helpful to actually read the decisions. Take the recent *It's Nice—Chicken Shack* case. The best part of it is the insurer arguing that viruses can cause property damage, which it contended (incorrectly) requires damage to a building's structure. The insurer did so because if viruses never cause property damage, virus exclusions are superfluous, because business interruption coverage generally requires property damage. Courts don't like superfluous language, so the insurer felt compelled to acknowledge that some viruses – but not of course COVID – could cause property damage, and thus the virus exclusion would apply in at least some cases. The insurer did not actually provide an example of a virus that knocks down buildings, however. Maybe it's the reverse of a neutron bomb, which kills people but leaves buildings standing.

The court ruled that there was no property damage because the insured had not pled that COVID ever was present on the premises. Oops! Yes, the court also said in dicta that COVID would not cause property damage because it would not alter the “appearance, shape, color, structure, or other material dimensions” of the property, but neither do groundwater contaminants, and no one disputes that they cause property damage. Apparently, the insured didn't point that out to the judge.

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