



BatesCarey Precedent on COVID-19 Business Interruption Claims

BatesCarey has secured dismissal of the following COVID-19 business interruption claims on behalf of its insurance clients:

1. ***Planet Sub Holdings, Inc v. State Auto Prop. & Cas. Co.***, ---F.4th ----, 2022 WL 1951615 (8th Cir. June 6, 2022) (Affirming the district court’s entry of judgment in State Auto’s favor upon finding that the insured failed to plausibly allege any physical alteration of property due to the actual presence of COVID-19, as necessary to satisfy the policy’s “direct physical loss” prerequisite under the business income, extra expense, and civil authority provisions, and separately finding absence of coverage under policy’s “food borne illness” endorsement.)
2. ***Danco LLC v. State Auto Prop. & Cas. Ins. Co.***, Case No. 3:20-CV-235-MPM-JMV (N.D. Miss. May 3, 2022) (Granting insurer’s Motion for Judgment on the Pleadings with prejudice upon finding that government orders were issued in response to the global health pandemic and not in response to any actual or alleged presence of the virus at the policyholder’s businesses, and a causal link not present between the alleged exposure of a disease at the premises and the order that suspends operations at the premises.)
3. ***Haisous, LLC v. State Auto Prop. & Cas. Ins. Co.***, Case No. 20 C 04286, 2022 WL 999987 (N.D. Ill. Mar. 31, 2022) (Court granted Motion for Judgment on the Pleadings with prejudice after finding that “direct physical loss” does not include “loss of use” without “physical alteration” of property, and concluding that Haisous did not adequately allege that its property suffered any physical alteration.)
4. ***University Management, Inc. v. State Auto Prop. & Cas. Ins. Co.***, Case No. 20-CV-00138, 2022 WL 805879 (N.D. Miss. Mar. 15, 2022) (Granting insurer’s motion for summary judgment on absence of coverage under food-borne illness endorsement.)
5. ***Terry Black’s Barbecue LLC v. State Auto. Mut. Ins. Co.***, 22 F.4th 450 (5th Cir. 2022) (Affirming the district court’s entry of judgment in State Auto’s favor upon finding that the insured failed to plausibly allege any tangible alteration or deprivation of its property which then caused its suspended operations, as necessary to satisfy the policy’s “direct physical loss”



prerequisite under the business income and extra expense provisions.)

6. ***Classic Dining Group LLC, et al. v. State Auto Insurance Cos.***, Case No. 20-CV004107 (Franklin Cty., Ohio C.P. Nov. 9, 2021) (Dismissing the insured's business interruption lawsuit with prejudice upon finding that the complaint failed to allege sufficient facts indicating that the insured's restaurants had been physically changed or ruined by the presence of COVID-19 or related governmental closure orders, and holding that the absence of a virus exclusion in the policy was irrelevant where the claims failed to satisfy the policy's insuring agreements.)
7. ***Wild Eggs Holding, Inc. v. State Auto Prop. & Cas. Ins. Co.***, Case No. 3:20-CV-501-RGJ, -- F.Supp.3d ---, 2021 WL 4234940 (W.D. Ky. Sept. 16, 2021) (Court granted Motion to Dismiss with prejudice for claims of business income losses and allegations of direct physical loss; no coverage awarded under policy's Restaurant Extension Endorsement.)
8. ***Isaac's Deli v. State Auto Prop. & Cas. Ins. Co.***, 539 F.Supp.3d 424 (E.D. Pa. 2021) (Government orders regulated use of property such that claim fell within Policy's ordinance or law exclusion; and no coverage under Foodborne Illness provision because civil orders did not result from any alleged infectious disease at insured's premises.)
9. ***Bluegrass, LLC v. State Auto. Mut. Ins. Co.***, 519 F.Supp.3d 293 (S.D.W. Va. 2021) ("I am unable to find that a regulatory shutdown order is a 'physical loss or damage' as contemplated by the plain language of the parties' contract."), *appeal dismissed*, 21-1900 (4th Cir. June 9, 2022)
10. ***Natty Greene's Brewing Co. v. Travelers Cas. Ins. Co. of Am., et al.***, 503 F.Supp.3d 359 (M.D.N.C. 2020) (Court granted Motion for Judgment on Pleadings based on virus exclusion in all policies at issue.)

For questions or more information regarding this update, please contact Adam H. Fleischer and David J. Buishas, or email BatesCarey's COVID-19 Team at COVID-19@BatesCarey.com.