



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. ***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.)
2. ***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.)
3. ***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.)
4. ***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.)
5. ***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.)



6. ***Planet Sub Holdings, Inc v. State Auto Prop. & Cas. Ins. Co.***, Case No. 4:20-CV-00577, 2021 WL 2394409 (W.D. Mo. May 19, 2021) (“[T]he fact that the virus travels through the air and was present in the United States . . . does not support the assertion that it ‘likely’ exists on . . . Plaintiff[s]’ property.”)
7. ***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.)
8. ***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.”)
9. ***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.