

At Least One Ohio Court Has Found That Restaurants' COVID-19 Business Losses Are Covered

By Laura (Megan) Faust

In a recent decision from the United States District Court in the Northern District of Ohio, Judge Dan Polster found that pursuant to the terms and conditions of a Commercial Business Policy, coverage existed for losses sustained by the restaurants as a result of government ordered shutdowns arising out of the COVID-19 pandemic. The Henderson Road Restaurant Systems and a slew of related companies that operated restaurants in Ohio, Michigan, Florida, Indiana and Pennsylvania, sustained losses suffered due to COVID-19 shutdown orders. As a result of the shutdown orders, the restaurants submitted claims to their insurance carrier for business income coverage. The insurance carrier denied the claim, arguing that tangible structural damage to the restaurants was necessary to satisfy the policy's threshold requirement that business income losses be tied to "direct physical loss of or damage to" property. This denial of coverage is consistent with decisions of other insurance companies nationwide and a vast majority of the courts nationwide interpreting this policy language.

Judge Polster disagreed with the insurance carriers' assertions that no coverage existed based upon the direct physical loss of or damage to language contained within the policy. Instead, Judge Polster agreed with the restaurants that the business income provision can also reasonably be read to extend coverage in instances where the policyholder merely loses its ability to use its insured properties for their intended purpose. Judge Polster said that, under that interpretation, the eateries have shown they suffered a covered loss of use because the various state and local pandemic closure orders temporarily prohibited them from offering in-person dining, which the cornerstone of their business model.

The Court also rejected the insurance carrier's reliance on exclusions for microorganisms or "loss of use" finding that the microorganism exclusion did not apply because the losses at issue were caused not by COVID-19 itself, but by the government shutdown orders. He noted that the insurance carrier could have included language to explicitly exclude losses resulting from government-mandated closures but did not do so.

This Decision is one of only the four decisions where a Judge has ruled outright that a policyholder is entitled to coverage for pandemic-related losses. Other decisions finding coverage come from Oklahoma, North Carolina and Washington.

If you have any questions or concerns, please reach out to any of the listed Roetzel attorneys.

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