

Are Economic Losses Caused by COVID Shutdowns Recoverable Under Commercial Property Insurance Policies?

Article

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As we have previously written, whether economic losses caused by COVID shutdowns can be recovered under commercial property insurance policies is a hotly-contested issue. (Past articles include, 'Will Your Business Interruption Insurance Actually Pay for Business Interruption?', 'Update on COVID-19 and Insurance Coverage' and 'Business Interruption Insurance: Will Insurers Be on the Hook for Business Losses Stemming from COVID-19?'). In a recent opinion, *Commodore, Inc. v. Certain Underwriters at Lloyd's London*, the Third District Court of Appeals of Florida says "no".

A restaurant owner in Miami-Dade County filed suit claiming that the restaurant suffered losses caused by the COVID-19 suspension of operations and those losses should be covered under its all-risk commercial property insurance policy. As with most property policies, the court noted that the key is whether the economic losses relate to a "physical loss of or damage to" the property. The Court rejected the restaurant's argument that this language should include situations where the insured's commercial property is "unusable for its intended income-producing purpose" because of COVID-19. Here, the restaurant was closed and thus lost revenues.

The Court looked to the Oxford English Dictionary to determine that the ordinary meaning of "physical" requires a tangible aspect, some "actual alteration of the insured's property." Under the circumstances, the restaurant was unable to demonstrate any physical alterations or damage to the property and therefore could not recover insurance proceeds.

The Court also rejected the argument that because the COVID-19 virus itself was physically present in the restaurant, this constituted the necessary physical alteration. The Court noted that surfaces can be easily cleaned and as such cannot be considered a loss under the insurance policy.

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Because commercial property insurance policies often vary in their terms, business owners should seek the advice of counsel to determine whether under their specific policy, they have a viable insurance claim for losses incurred as a result of COVID-19 shutdowns and suspensions. It is certain that this issue will continue to be hotly litigated and other courts have reached different conclusions.