Temporarily Closed for Business

COVID-19 Insurance Coverage

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The judiciary is unlikely to rule in favor of plaintiffs seeking coverage for shuttering their businesses to prevent the spread of COVID-19.

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This article is an overview of the insurance policy provisions most likely to control whether coverage exists for the myriad of business interruption claims stemming from the COVID-19 pandemic.

The first part explains why the most relevant International Organization for Standardization (ISO) policy provisions will not be triggered by COVID-19 business interruption claims stemming from shelter-in-place orders. Business interruption provisions only cover revenue lost from a suspension of operations caused by a "direct physical loss or damage." Through April, businesses suspended operations to comply with prophylactic measures designed to prevent the spread of COVID-19. Most did not suspend operations because of documented COVID-19 contamination at their premises. Under existing caselaw, preventive closures are not a suspension of operations caused by a "direct physical loss or damage."

It is a closer question whether present and future business interruption claims stemming from documented COVID-19 exposures trigger business interruption coverage. That is the subject of the second part: whether a business shutdown caused by documented virus contamination constitutes "direct physical loss or damage." Courts have not yet answered that question. Guidance, however, is found in the outcomes of past disputes over business interruption caused by microbial contamination.

The third part reviews current litigation to consider the arguments that policyholders have raised in attempts to obtain coverage for business interruption claims, with the goal of providing a general overview of the landscape of current COVID-19 coverage litigation.

Closures to Prevent COVID-19 Spread Do Not Trigger Business Interruption Coverage

In the wake of the COVID-19 pandemic, many businesses suspended operations. Some did so voluntarily. Others were forced to shut down (or to remain closed) by governmental orders. Policyholders are likely to advocate that two policy provisions allow them to recover revenue lost during those suspensions: (1) business interruption provisions; and (2) civil authority provisions. An analysis of each provision strongly suggests that they do not provide coverage for such claims.

Business Interruption Provisions Will Likely Not Cover Losses Stemming from Preventive Measures

Typically, business interruption coverage attaches only where the policyholder affirmatively shows that it suspended its operations due to a "direct physical loss or damage to property" at its premises. *See* ISO Standard Property Policy (CP 00 99 10 12); ISO Building and Personal Property Coverage Form (CP 00 10 10 12). Here is the business interruption provision in the current ISO commercial property business income (and extra expense) coverage form:

> We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration." The "suspension" must be caused by *direct physical loss of or damage to property* at premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations.…

ISO Form CP 0 30 10 12 (2015) (emphasis added).

Traditionally, this provision provides interruption coverage when a policyholder's premises sustains property damage due to an accidental peril, such as a tree falling down and destroying a large section of a restaurant. There is much debate over whether a documented COVID-19 exposure inside of a business constitutes "direct physical loss or damage to property." The article addresses that question in later sections. There can be little debate, however, that suspending business operations to *prevent* exposure to and the spread of COVID-19 is not a suspension caused by "direct physical loss of or damage to property." In short, standard business interruption coverage is not triggered by the losses that many businesses sustained when they shut down to help prevent future infections.

The case of *Source Food Technology, Inc. v. U.S. Fidelity and Guar. Co.,* 465 F.3d 834 (8th Cir. 2006)—where a policyholder sought coverage after the government prohibited importation of Canadian beef to prevent the spread of mad cow disease—illustrates the point. The policyholder ordered beef from Canada to distribute within the United States. Later, the United States banned the importation of beef from Canada, after a cow in Canada tested positive for mad cow disease. As a result, Source Food Technology's order could not be delivered. Its customers fulfilled their beef orders through other vendors, causing Source Food Technology to sustain tremendous lost revenue and profits. It then submitted a claim to United States Fidelity and Guaranty Company for business interruption coverage, which was denied.

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The policyholder in *Source Food Technology, Inc.* could not prove that its beef order was contaminated. Instead, it argued that its order should be treated as contaminated because the government's import prohibition was based on the concept that all beef should be treated as contaminated since any particular piece of Canadian beef might be tainted. Rejecting that argument, the United States Court of Appeals for Eighth Circuit noted that "direct physical loss or damage to" property required proof of actual, rather than potential, contamination.

Unproven Contamination

The legal principal that potential but unproven contamination is not a "direct physical loss or damage to" property means that suspected, but unproven, COVID-19 contamination should not trigger business interruption coverage. Consequently, most COVID-19-related business interruption losses during March and April 2020 did not trigger insurance coverage.

Indeed, state governments ordered businesses to close to *prevent* the spread of COVID-19. Most businesses were never even tested for virus contamination. Closures designed to prevent the spread of suspected or potential infections would not constitute "direct physical loss or damage to property." As such, any business interruption damages claim stemming from those preventive closures would not be covered by ISO policies.

In carrying out its duty to investigate the facts of a business interruption claim properly, an insurance adjuster might consider requesting whether its insured can produce documentation that its business was actually contaminated by COVID-19. Taking that action should help demonstrate a proper investigation into the facts of a policyholder's business interruption claim. *See, e.g., Ga. Farm Bureau Mut. Ins. Co. v. Murphy*, 201 Ga. App. 676, 679, 411 S.E.2d 791, 794 (1991) (generally discussing an insurance carrier's obligation to investigate the facts of specific claims thoroughly before denying coverage); *Egan v. Mutual of Omaha Ins. Co.,* 24 Cal.3d 809, 819 (1979) ("it is essential that an insurer fully inquire into possible bases that might support the insured's claim before denying it."); *Wilson v. 21st Century Ins. Co.* 42 Cal.4th 713 (2007) ("denial of a claim on a basis unfounded in the facts known to the insurer… may be deemed unreasonable.").

Likewise, where a declaratory judgment action is filed after the denial of a claim, basic written discovery should establish whether the insured can provide competent evidence that its business was contaminated with COVID-19. The insured bears the burden to meet the threshold issue that there is physical loss or damage to trigger coverage. *Universal Image Productions, Inc. v. Chubb Corp.*, 703 F. Supp. 2d 705, 710 (E.D. Mich. 2010). Absent evidence of contamination, a court should find that an insurer has no coverage obligation to its insured.

Freedom of Contract

Within the legal community, there should be widespread consensus that an insurance carrier acts appropriately by denying coverage for losses clearly falling outside the terms of a policyholder's insurance contract. Freedom of contract is at the heart of our legal system. Yet, the unprecedented misfortune ushered in by the COVID-19 pandemic has put pressure on the insurance industry to pay uncovered business interruption claims.

For example, in his April 10, 2020, daily briefing, President Trump stated,

> [Y]ou have people that have never asked for business interruption insurance, and they've been paying a lot of money for a lot of years for the privilege of having it. And then when they finally need it, the insurance company says, "We're not going to give it." We can't let that happen.

Asking an insurance company in such a situation to reimburse uncovered business interruption claims, however, is akin to asking the insurance industry to take on the impossible task of bailing out the private sector. Fortunately, history has shown that the judicial branch will not impose bailout responsibility on the insurance industry in deciding business interruption coverage disputes—even in the face of great political or social pressure.

For example, in *United Air Lines v. Ins. Co. of the State of Pa.,* 439 F.3d 128, 134–35 (2d Cir. 2006), United Airlines sought business interruption coverage after the United States government grounded all flights on September 11, 2001. The policy in question only provided business interruption coverage caused by "damage to or destruction of [United's] Insured Locations." Affirming the lower court's refusal to find coverage, the Second Circuit held that "the government's subsequent decision to halt operations at the Airport indefinitely was based on fears of future attacks," and not because of property damage caused by prior terrorist attacks: "The Airport was reopened when it was able to comply with more rigorous safety standards; the timetable had nothing to do with repairing, mitigating or responding to the damage caused by the attack on the Pentagon." *Id.* 134–35.

Likewise, in *The Paradies Shops, Inc. v. Hartford Fire Ins. Co.*, the United States District Court for the Northern District of Georgia agreed that the insurer properly denied business interruption coverage for losses resulting from a government order grounding all flights. 2004 U.S. Dist. Lexis 30124, at *21 (N.D. Ga. Dec. 15, 2004). The court held that the government's order was "designed to prevent, protect against, or avoid future damage," and thus, it was "not a 'direct result' of already existing property loss or damage." *See also City of Chi. v. Factory Mut. Ins. Co.,* 2004 U.S. Dist. Lexis 4266, at *12 (N.D. Ill. Mar. 11, 2004) (upholding denial of coverage because "[t]he ground stop was ultimately imposed *to protect against any further terrorist attacks* like those that damaged and/or destroyed the World Trade Center and the Pentagon.") (emphasis added).

In short, COVID-19 claims designed to prevent or to protect against undocumented contamination should not trigger coverage under standard business interruption coverage provisions. Basic contract interpretation and ample case law support denying those claims.

Civil Authority Provisions Will Not Cover Losses Stemming from Preventative Measures, but the Legal Question Will Be Closer

By April 2020, most state governments had ordered all nonessential businesses to suspend operations to slow the spread of COVID-19. Some insurance policies provide coverage extensions for damages caused by the actions of civil authorities. Policyholders have sought coverage under these provisions.

Similar to business interruption provisions, most civil authority provisions require the policyholder to prove "a direct physical loss." In the case of the civil authority provision, the policy usually requires proof that a civil authority prohibited access to the policyholder's business as a result of a direct physical loss of, or damage to, property away from the insured's premises. Once again, loss stemming from preventive civil authority orders will not trigger business interruption coverage.

For example, in *Kelaher, Connell & Conner, P.C. v. Auto-Owners Ins. Co.,* 2020 U.S. Dist Lexis 31081 (D.S.C. 2020), an insurance policy provided coverage "to include the actual loss or damage sustained by you

which is a direct result of an interruption of the business covered by this Policy because *access to the described business premises is prohibited by order of civil authority because of damage or destruction of property* adjacent to the described premises by the perils insured against." (emphasis added). The insured lost money after South Carolina's governor ordered a mandatory evacuation to prevent hurricane damage.

In finding a lack of coverage, the court explained, "there is no evidence in the record evidencing that Hurricane Florence damaged any property before the Governor issued the evacuation order. *Stated as plainly as the Coverage Exclusion, there is no evidence in the record that the civil authority order was issued 'because of damage or destruction of property.*'" (emphasis added).

Similarly, in *United Air Lines v. Ins. Co. of the State of Pa.,* 439 F.3d 128, 134–35 (2d Cir. 2006), the carrier denied coverage under a civil authority provision because the policyholder was unable to establish that the order grounding all flights was issued as a result of the 9/11 attacks, as opposed to the threat of future attacks. Or as stated succinctly by the United States District Court for the Northern District of Georgia in *The Paradise Shops* decision:

> Though [the order] was in part a product of the terrorist-inflicted damage already in existence at the time the order was issued, the ground stop was ultimately imposed to protect against any further terrorist attacks.… The Court finds that an order like [it] that is designed to prevent, protect against, or avoid future damage is not a "direct result" of already existing property loss or damage.

The Paradise Shops, Inc. v. Hartford Fire Ins. Co., 2004 U.S. Dist. Lexis 30124, at *21 (N.D. Ga. Dec. 15, 2004). *See also City of Chicago v. Factory Mut. Ins. Co.,* 2004 U.S. Dist. Lexis 4266 (N.D. Ill. March 18, 2004) (same).

In short, business interruption coverage should not be triggered as a result of any stay-at-home orders under civil authority provisions that were issued due to the anticipated threat of future damage to property. The closer question—examined in the next section of this article—is whether business interruption coverage is triggered by a documented case of COVID-19.

Closures Due to Documented COVID-19 Contamination

As we write, states are increasingly lifting stay-at-home orders. With businesses reopening, some governors openly acknowledged the possibility of increased infections. Commenting on the lifting of Iowa's stay-at-home order, Governor Kim White noted, "the reality is we can't stop the coronavirus.… It's going to remain in our communities until we have a vaccine available. So, we have to learn to live with it without letting it govern our life."

One day after Georgia's shelter-in-place order expired, a popular Atlanta restaurant closed when one of its cooks tested positive for COVID-19. According to the restaurant's Facebook page, five employees who had worked with the cook were being tested. The restaurant later posted this:

> Following a deep cleaning and sanitation by a professional cleaning company and after contacting the Georgia Department of Health and meeting their guidelines, we are reopening tomorrow.… We will resume regular business hours for to-go and delivery orders. Our dining room and patio remain closed. We look forward to serving you again!

Facebook.com/hattiesbsATL (last accessed May 10, 2020).

Businesses facing losses stemming from a COVID-19 exposure will likely explore whether they are entitled to reimbursement, raising the question of whether a documented COVID-19 contamination triggers business interruption coverage. The debate will be whether virus contamination constitutes a direct physical loss.

In terms of damages, policyholders will likely claim they needed to shut down to perform a deep clean of their facilities. On the extreme end, businesses may argue that any other employee who had contact with the exposed employee would have to self-quarantine for fourteen days. Restaurants may even argue that the exposure necessitated the scrapping all food, given the danger of serving contaminated food. Of course, "only income lost because of business interruption caused by physical damage is covered." *White Mt. Cmtys. Hosp., Inc. v. Hartford Cas. Ins. Co.*, 2015 U.S. Dist. LEXIS 50900 * 6 (D. Ariz. April 17, 2015) (rejecting coverage for losses stemming from a general economic downturn caused by a fire).

Guidance from Microbial Contamination Cases

Litigation regarding COVID-19 cases is in its infancy and policyholders are raising many arguments to support coverage. The actual legal question of whether COVID-19 contamination constitutes "direct physical loss or damage" has not been answered. Guidance, however, is found by examining the outcome of past disputes over business interruption caused by microbial contamination.

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The "Traditional" Rule

Before 1968, every court interpreting "physical loss or damage to property" found that this phrase required a demonstrable *physical* change to insured property. Scott G. Johnson, *What Constitutes Physical Loss or Damage in Property Insurance Policy*, 54 Tor & Ins. L. J. 95 (2019). Many courts still follow this rule. *See, e.g., Mama Jo's, Inc. v. Sparta Ins. Co.,* 2018 U.S. Dist. Lexis 201852, at *24 (S.D. Fla. June 11, 2018) (holding that construction dust and debris that necessitated the cleaning

of a restaurant was not a "direct physical loss" because it did not constitute "tangible, physical losses."); *Mastellone v. Lightning Rod Mut. Ins. Co.*, 175 Ohio App.3d 23, 41 (2008) (mold did not constitute physical loss or damage to property because it could be cleaned and, thus, had not caused a tangible change to the property); *Aflac Inc. v. Chubb & Sons, Inc.*, 260 Ga. App. 306 (2003) ("direct physical loss… contemplates an actual change in insured property then in a satisfactory state, occasioned by accident or other fortuitous event directly upon the property causing it to become unsatisfactory for future use or requiring that repairs be made to make it so."). Jurisdictions adhering to the traditional rule will almost certainly find that COVID-19 contamination does not trigger coverage.

In short, when COVID-19-contamination claims are asserted, a choice-of-law analysis will be key as well as a factual analysis of whether the contamination truly renders the entire premises uninhabitable.

The Alternative "Functionality" Rule

In *Western Fire Ins. Co. v. First Presbyterian Church,* 437 P.2d 52 (Colo 1968), however, a new rule was developed that some jurisdictions now follow. Scott G. Johnson, *What Constitutes Physical Loss or Damage in Property Insurance Policy*, 54 Tor & Ins. L. J. 95 (2019). There, a policyholder closed its business after gasoline vapors made its premises uninhabitable. The court found that exposure rendering a property uninhabitable constituted direct physical loss. *Western Fire Isn. Co.,* 437 P.2d at 55.

Latching onto that principal, some courts have held that microbial contamination that renders premises totally uninhabitable constitutes a direct physical loss, which triggers business interruption coverage. For example, in *Motorists Mutual Insurance Co. v. Hardinger*, the United States Circuit Court of Appeals for the Third Circuit held that an E. coli contamination in a policyholder's well was a direct physical loss to property. 131 Fed. Appx. 823, 825–27 (3d Cir. 2005). Importantly, there was evidence not only documenting the bacterial contamination, but also finding that the contamination could not be remediated. Thus, the court found "a genuine issue of fact whether the functionality of the policyholder's property was nearly eliminated or destroyed, or whether their property was made useless of uninhabitable by the contamination."

Likewise, in *Gregory Packaging, Inc. v. Travelers Prop. Cas. Co. of Am.,* 2014 U.S. Dist. Lexis 165232 (D.N.J. Nov 25, 2014), the court found "direct physical loss or damage to" property when ammonia was released inside the policyholder's packaging facilities. Relying on the principle first articulated in *Western Fire Ins. Co. v. First Presbyterian Church,* the United States District Court for the District of New Jersey found that the "ammonia discharge inflicted 'direct physical loss or damage to'" property because "the ammonia physically rendered the facility unusable for a period of time." *Id.* at 17.

Similarly, in *Cooper v. Travelers Indemnity Company of Illinois*, a court found coverage was triggered after it was documented that well water was contaminated with coliform bacteria and E. coli bacteria. 2002 U.S. Dist. Lexis 29085 (N.D. Cal. 2002). The policy provided coverage for "necessary Extra Expense [incurred] during the 'period of restoration' that… would not have [been] incurred if there had been no direct physical loss or damage to property at the premises." *Id.* at 10. *See also Matzner v. Seaco Ins. Co.*, No. 96-0498-B, 1998 Mass. Super. Lexis 407, 1998 WL 566658, at *3 (Mass. Super. Aug. 12, 1998) (finding that carbon monoxide contamination at premises constitutes direct physical loss to property).

In jurisdictions adhering to *Western Fire*'s functionality rule, the facts of each claim will be paramount. The case of *Universal Image Productions, Inc. v. Chubb Corp.*, 703 F. Supp. 2d 705 (E.D. Mich. 2010), underscores the evidentiary hurdles that a policyholder must overcome. There, a policyholder sought business interruption coverage as a result of bacteria and mold permeating the air and ventilation system of its premises. Finding that coverage was not triggered, the court noted that "even physical damage that occurs at the molecular or microscopic level must be 'distinct and demonstrable'" and that the insured had not carried that evidentiary burden.

The court noted:

> [The policyholder's own expert] did not even suggest that the entire premises be vacated. Rather, he merely recommended that (1) the occupants of the first floor wear respirators, (2) the Building owner authorize an immediate shutdown of the ventilation system and (3) a complete remediation of the ventilation system be undertaken. [The expert] also suggested that only one employee (who was infected with bacterial pneumonia) avoid the affected floor.

Id. at 710.

Integral to the Trajectory: Choice of Law

In short, when COVID-19 contamination claims are asserted, a choice-of-law analysis will be key, as well as a factual analysis of whether the contamination truly renders the entire premises uninhabitable. Even then, coverage still should not be triggered. And applicable exclusions may also serve to bar coverage, although discussing those exclusions is outside the scope of this article.

Current Litigation

Litigation involving policyholders seeking business interruption coverage for COVID-19 claims is sprouting up around the country:

- *Cajun Conti LLC et al. v. Certain Underwriters at Lloyd's, London et al.*, No. 2020-02558 (La. Dist. Ct., Orleans Parish, Mar. 16, 2020) (New Orleans-based restaurant sought a declaration that their business interruption coverage would reimburse COVID-19 damages.)
- *SCGM Inc. v. Certain Underwriters at Lloyd's*, case number 4:20-cv-01199 (Theatre ownership group argues it is covered against pathogens.)
- *French Laundry Partners, LP dba The French Laundry v. Hartford Fire Ins.*

Co., (Cal. Superior Ct. Napa Cnty., Mar. 25, 2020) (Restaurant alleges its insurer owes coverage for both business interruption and property damage.)

- *El Novillo Restaurant, et al. v. Certain Underwriters at Lloyd's, London et al.*, No. 1:20-cv-21525-UU (S.D. Fla. Apr. 9, 2020) (Restaurant seeks coverage not only for the COVID-19 pandemic, but also for damages stemming from the government response to the pandemic—including future business operation suspensions.)
- *Chickasaw Nation Dept. of Commerce v. Lexington Insurance Co.*, No. CV-20-35 (Okla. Dist. Ct. Pontotoc Cnty. 2020) (The Chickasaw nation asserts that its properties used in connection with multiple commercial businesses and services were damaged by the coronavirus because they could no longer be used for their intended purpose. In addition, the tribe also seeks to trigger civil authority coverage.)
- *Big Onion Tavern Group LLC v. Society Insurance, Inc.* No. 1:20-cv-02005 (N.D. Ill. 2020) (Movie theater and restaurant owners assert that if the insurer wanted to exclude pandemic-related losses, it could have done so through an exclusion for loss caused by a virus. The owners claim that the absence of such an exclusion shows that there should be coverage, and if COVID-19 could never create direct physical property loss, such an exclusion would never be needed.)

Attempts to establish coverage despite physical loss requirements and exclusions are not new arguments; policyholders simply have repackaged them. Many of these claims weave similar themes into their allegations, the thrust being that the invisible contaminants can constitute a physical loss if a business or space becomes uninhabitable due to COVID-19.

As noted, the definition of direct physical loss or damage to property is no longer as restrictive in some jurisdictions as it had been. In seeking coverage, policyholders are likely to lean on cases from those jurisdictions, such as *Port Authority v. Affiliated FM Ins. Co.*, which holds that "sources unnoticeable to the naked eye," such as asbestos in the air, can be direct physical loss if they make a building "uninhabitable and unusable." 311 F.3d 226, 235 (3d Cir. 2002).

The complaints in recently filed COVID-19 coverage litigation weave this holding into their allegations. Unable to show traditional physical property damage, policyholders argue that the invisible threat of continuing or future germ contamination renders the property uninhabitable. They also argue that because COVID-19 is potentially transferable in the air, the virus has rendered property unfit for occupancy or uninhabitable, which can be considered a loss.

These arguments have little chance of success in jurisdictions that follow the traditional definition of direct physical loss or damage to property. Even in jurisdictions that allow a broader definition of direct physical loss, however, insurers still have two strong counterarguments.

First, physical damage to a structure "by sources unnoticeable to the naked eye must meet a higher threshold." *Port Authority v. Affiliated FM Ins. Co.*, 311 F.3d 226, 235 (3d Cir. 2002) (citing *Western Fire Ins. Co. v. First Presbyterian Church*, 165 Colo. 34, 1968.) The mere presence of an invisible potential toxin does not constitute a direct physical loss. Rather, a policyholder must demonstrate a contamination so significant "as to nearly eliminate or destroy [the property's] function, or render it uninhabitable." *Id.* 232. *See also Pentair, Inc. v. Am. Guar. & Liab. Ins. Co.* 400 F.3d 613, 616 (8th Cir. 2005) (emphasizing that loss of function alone was not "direct physical loss or damage" and that the requirement could not be interpreted to be met "whenever property cannot be used for its intended purpose."). As noted, in a coverage dispute, it is the policyholder's evidentiary burden to point to the existence of such evidence.

Second, if a policyholder were able to prove actual COVID-19 contamination within its business, the ability to mitigate the contamination quickly could prove fatal to any argument for coverage. Some courts hold there is no direct physical loss to an insured's property stemming from contamination that can be cleaned without altering the structure itself. *See, e.g., Mastellone v. Lightning Rod Mut. Ins. Co.*, 175 Ohio App.3d 23, 41 (2008); *Mama Jo's, Inc. v. Sparta Ins. Co.*, 2018 U.S. Dist. LEXIS 201852 at *24 (S.D. Fla. June 11, 2018). Indeed, in *Motorists Mutual Insurance Co. v. Hardinger*, 131 Fed. Appx. 823, 825–27 (3d Cir. 2005), where the court held that there was a fact question as to whether an E. coli contamination in a policyholder's well constituted a direct physical loss to property, the court specifically emphasized that there was evidence not only documenting the contamination but also finding that the contamination could not be remediated.

Although the science is still developing, it appears that COVID-19 cannot survive in the air for long. *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, 382 N. Engl. J. Med. 1564–67 (2020). doi: 10.1056/NEJMc2004973. Surface contamination can be cleaned with household disinfectants. *See List N: Disinfectants for Use Against SARS-CoV-2*, **https://www.epa.gov**. Moreover, the alcohol active ingredients in "hand sanitizers, even when diluted, are effective in killing SARS-CoV-2 in vitro." Stephen G. Baum, *Effectiveness of Hand Sanitizer Constituents Against SARS-Cov-2*, NEJM Journal Watch (April 21, 2020), **https://www.jwatch.org**. A policyholder's ability to disinfect contaminated areas as part of safe hygiene practices provides evidentiary support for the legal argument that even documented COVID-19 contamination is not a direct physical loss to the premises.

Conclusion

All Americans can empathize with those suffering from the terrible toll that the coronavirus pandemic has inflicted on businesses and their employees, but "insurance is a matter of contract, not sympathy.…" *Georgia Farm Bureau Mut. Ins. Co. v. Meyers*, 249 Ga. App. 322 (2001). Insurance companies have made it quite clear in their policies that they are not providing coverage for pandemic-induced business losses, nor could they do so and still provide affordable business coverage. Most courts are likely to understand this and give effect to the plain, unambiguous language of business interruption provisions. Undoubtedly, however, over the next few years, policyholders will test the commitment and obligation of the courts to apply the law faithfully—without regard to sympathy or solicitude to those affected by this tragedy.