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# COVID-19 Business Interruption Litigation Update: Middle District of North Carolina Enforces Virus Exclusions

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In a succinct November 30, 2020, opinion by Judge Catherine C. Eagles, the U.S. District Court for the Middle District of North Carolina held that business interruption losses incurred as a result of government orders limiting the operation of certain businesses are a direct result of the SARS-CoV-2 virus and, therefore, are excluded by certain virus exclusions in commercial property insurance policies.

Since March 2020, restaurant, bar, barbershop, and other business owners have filed thousands of lawsuits against their business, property, and casualty insurers. Such lawsuits typically allege that state and local government orders which restrict the operations of certain businesses trigger business interruption coverage under an insurance policy.

Before the Middle District's November 30, 2020, opinion there were 50 lawsuits across the country in which insurers moved to dismiss based on policies that contain virus exclusions. Of those 50 motions to dismiss, 42 were granted and only 8 were denied. See The University of Pennsylvania Casey Law School's COVID Coverage Litigation Tracker.

In *Natty Greene's Brewing Company, LLC, et al. v. Travelers Casualty Insurance Company of America, et al*, No. 1:20-CV-00437-CCE-JEP, the Middle District of North Carolina tipped this balance further in favor of insurers. Beginning in March 2020, Governor Roy Cooper issued executive orders restricting the operation of dine-in food and beverage service at bars and restaurants. This and other executive orders were put in place to mitigate community spread of COVID-19 and to reduce the burden on the state's health care providers and facilities. The plaintiffs alleged that they incurred damages, in the form of financial losses only, resulting from these executive orders.

Republic-Franklin Insurance Co., Frankenmuth Mutual Insurance Co. (represented in this action by Young Moore attorneys Matthew J. Gray, Andrew P. Flynt, and Patrick T. VanderJeugd), Travelers Casualty Insurance Co., State Auto Insurance Co., and Sentinel Insurance Co. each moved to dismiss the claims of their insured plaintiffs based in part on the virus exclusions in the relevant policies.

The Court found that each of the virus exclusions "expressly excludes coverage for loss or damage caused directly or indirectly by, or resulting from, any virus." The Court explained that the plaintiffs alleged that COVID-19 is the reason the executive orders were issued and that COVID-19 is the underlying cause of the plaintiffs' alleged losses. The Court reasoned that "[w]hile the Orders technically forced the properties to close to protect public health, the orders only came about sequentially as a result of the COVID-19 virus spreading rapidly throughout the community."

With this opinion and order, the Court highlights the causal connection between COVID-19, the various state and local orders on which most business interruption cases are based, and the purely financial losses alleged therein. In many cases, plaintiffs' counsel have creatively phrased their pleadings in an attempt to trigger coverage while avoiding virus exclusions. This opinion cuts through the veil of "technicalities" and labels emphasized in many such pleadings and succinctly underscores the causal relationship between the COVID-19 virus and the plaintiffs' alleged losses.

As the winter months approach, healthcare professionals predict that COVID-19 numbers will increase dramatically and some government officials have indicated the possibility of heightened restrictions. As new business interruption cases are filed, the Middle District of North Carolina's opinion in *Natty Greene's* will likely provide guidance to other courts in North Carolina analyzing similar dispositive motions based on virus exclusions.

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**CONTACT US**

Phone: 919-782-6860

Fax: 919-782-6753

**OFFICE**

Young Moore and Henderson, P.A.

3101 Glenwood Ave. Suite 200

Raleigh, N.C. 27612

**MAILING ADDRESS**

Young Moore and Henderson, P.A.

P.O. Box 31627

Raleigh, N.C. 27622-1627