

# IMPORTANT COVID-19 UPDATE

## UPDATE ON RECENT COMMERCIAL INSURANCE CLAIMS AMID COVID-19

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The COVID-19 pandemic and corresponding government responses have adversely impacted business operations globally resulting in numerous claims by policyholders for business interruption insurance coverage. As soon as the policyholders filed claims with insurance carriers, the insurance carriers publicly made clear that they were not going to pay claims in majority of cases asserting there was no coverage under the various property policies. As a result, business owners filed suits across the country and the world.

According to the University of Pennsylvania Law School's [litigation tracker](#), as of August 24, 2020, over 1150 cases have been filed by policyholder's to mitigate the business interruption losses sustained from the pandemic. Of the handful of early decisions, most have gone in favor of the insurers. However, recent developments ruled in favor of policyholders, but such decisions are early in the cases.

For example, a New Jersey trial court [denied](#) an insurance carrier's motion to dismiss a COVID-19 business interruption suit due to unsettled questions under New Jersey law regarding whether loss of a property's functional use (i.e. closure of non-essential businesses by executive order) can constitute "direct physical loss" under a property policy. Similarly, the Middle District of Florida made a similar [ruling](#), denying an insurance carrier's motion to dismiss a COVID-19 business interruption suit ruling that the language in the virus exclusion was ambiguous in light of the exclusion being lumped in with other pollutants that logically does not align with the losses stemming from COVID-19. In addition, there were a couple decisions in Missouri that similarly refused to dismiss the complaints.

Also, in the U.K., the High Court ruled on a test case which included sample language from business interruption policies of eight insurers to clarify coverage issues. The Court, in its [162 page ruling](#), found in favor of many of the arguments supporting coverage opening the door for coverage. However, recent news from the UK indicates that the ruling may be facing an

appeal. Regardless, for policyholders in the U.S. though, the Council of Insurance Agents & Broker's Chief Legal Officer, Scott Sinder believes that the High Court's decision will have very little impact on U.S. cases as the issues discussed in the Courts ruling differ from those present in U.S. cases.

So what do these rulings practically mean for business interruption insurance policyholders in the U.S.? Well...they insert even further ambiguity into the mix. Unfortunately, the cases do not provide any precedential value to rely on when seeking coverage. As such, many policyholders will need to sit back and wait until these cases, and other similarly situated ones, run their course through the court systems and final rulings are made.

States continue to propose legislation that seeks to mandate coverage, some prospectively. Nothing significant has been enacted to date. Here is a helpful state-by-state [tracker](#).

Please visit our [COVID-19 Resource Center](#) for more information.

