

Eighth Circuit Affirms Dismissal Of Business Interruption Loss Coverage Suit

08.06.21



(Article from *Insurance Law Alert*, July/August 2021)

For more information, please visit the [Insurance Law Alert Resource Center](#).

In one of the first federal appellate rulings on the issue, the Eighth Circuit affirmed an Iowa federal district court's dismissal of an oral surgeon's lawsuit seeking business interruption coverage for COVID-19-related losses. *Oral Surgeons, P.C. v. Cincinnati Ins. Co.*, 2021 WL 2753874 (8th Cir. July 2, 2021).

The policyholder sought coverage for business losses incurred during state-mandated shutdowns and restrictions aimed at slowing the spread of COVID-19. Cincinnati denied coverage based on the lack of "physical loss" or "physical damage," as required by the policy.

The Eighth Circuit ruled that an inability to use property fully as intended does not constitute a physical loss, emphasizing that "there must be some physicality to the loss or damage of property—*e.g.*, a physical alteration, physical contamination or physical destruction." The court reasoned that the "period of restoration" policy provision supported this interpretation because only property that has "suffered physical loss or physical damage requires restoration." In so ruling, the court cited case law in which courts have found no "physical loss or damage" for business losses stemming from a power outage or trade embargo.

The Eighth Circuit's ruling accords with the overwhelming majority of Iowa state and federal decisions (as well as those of jurisdictions across the country) holding that the COVID-19 pandemic and related government restrictions do not constitute direct physical loss or damage for purposes of first-party insurance coverage.

Authors and Contacts

[Joshua Polster](#)

Partner

joshua.polster@stblaw.com

+1-212-455-2266

