



Another Favorable Ruling For California Policyholders Seeking Coverage For COVID-19 Losses

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A Los Angeles court delivered another win to California policyholders in their ongoing battle to recover insurance proceeds for business interruption losses related to the COVID-19 pandemic. In [Boardwalk Ventures CA, LLC v. Century-National Insurance Company, et al.](#), the court denied the insurer's motion for judgment on the pleadings, finding that the policyholder, Boardwalk, had sufficiently alleged a basis for coverage under the commercial insurance policy issued by the insurer (the "Century Policy").

Boardwalk alleges that it suffered a substantial loss of business income when it was forced to shut down its Hermosa Beach restaurant as a result of the pandemic and the stay-at-home orders issued by the State of California and the City of Los Angeles in response to the pandemic. Boardwalk seeks a declaration that it is entitled to coverage for this loss under the Century Policy, which covers lost business income and extra expenses caused by "direct physical loss of or damage to property" or by "action of civil authority" that prohibits access to covered property due to "direct physical loss of or damage to property." The Century Policy does not contain a virus, contamination, or pollution exclusion.

In its motion for judgment on the pleadings, the insurer argued that Boardwalk could not allege a basis for declaratory relief because its loss did not constitute "direct physical loss of or damage to" covered property. Relying on [MRI Healthcare Ctr. of Glendale, Inc. v. State Farm Gen. Ins. Co.](#) and a

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litany of other state and federal decisions, the insurer contended that the phrase “direct physical loss of or damage to” requires “distinct, demonstrable, physical alteration of the property,” and that the coronavirus, as a matter of law, does not physically alter property, including Boardwalk’s restaurant. Accordingly, the insurer asked the court to dismiss Boardwalk’s lawsuit.

Ultimately, the insurer’s arguments did not persuade the court. It denied the motion, ruling that, among other things, Boardwalk had alleged a valid cause of action for declaratory relief. As required in connection with a motion for judgment on the pleadings, the court accepted as true Boardwalk’s allegations that the “presence of people infected with the Virus particles renders physical property in their vicinity unsafe and unusable, resulting in direct physical loss to that property,” including Boardwalk’s restaurant.

Along with prior policyholder-friendly decisions, the Boardwalk ruling gives California policyholders hope that they may eventually obtain relief for business interruption losses related to the pandemic.

See also Sunstone Hotel Investors, Inc. v. Endurance American Specialty Insurance Co.; P.F. Chang's China Bistro, Inc., et al. v. Certain Underwriters at Lloyd's; Goodwill Industries of Orange County, California v Philadelphia Indemnity Co.; Baldwin Academy, Inc. v. Markel Insurance Company; Best Rest Motel Inc v. Sequoia Insurance Co.