

THOUGHT LEADERSHIP

News

## COURT FINDS NO DIRECT PHYSICAL LOSS CAUSED BY COVERED PERIL – GRANTS SUMMARY JUDGMENT IN FAVOR OF INSURER ON HURRICANE HARVEY BUSINESS INTERRUPTION CLAIM BASED ON PORT CLOSURE

Newsbrief

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Last Tuesday, a Houston federal district court granted summary judgment in favor of an insurer finding that a port closure due to approaching hurricane conditions did not satisfy the insurance policy's direct physical loss requirement necessary to trigger the business interruption coverage. In *Evanston Insurance Co. v. AmSpec Holding Corp.*, 2020 WL 6152190 (S.D. Tex. Oct. 20, 2020), AmSpec inspectors travel to ports, refineries, terminal and barges and vessels to inspect and test samples for quality testing. In August 2017, the Coast Guard closed ports as Hurricane Harvey approached the Gulf Coast. AmSpec submitted a business interruption claim under its insurance policy claiming loss of income and expenses due to the port closures. Evanston denied the claim, concluding that "there was no loss as a result of denial of access by an order of civil authority as a result of physical loss or damage." This lawsuit followed.

Evanston filed a motion for summary judgment contending in part that there must be "a causal link between any prior direct physical damage and the civil authority order for AmSpec to recover." The court carefully considered Texas case law interpreting similar insurance policy provisions and policy language with "due to" and "a result of" physical damage requirements. The court then observed that under the facts presented, "There is no evidence in the record that Hurricane Harvey damaged any property *before* the Coast Guard began issuing port closures." "Stated as plainly as the Policy, there is no evidence in the record that the civil authority order was issued "as a result of direct physical loss of or damage to property." Accordingly, the court granted summary judgment in favor of Evanston on all contractual and extra-contractual claims.

**[Editor's Note:** although this case involved hurricane closure decisions, the parallels to covid-19 closures might make this case applicable to certain virus business interruption claims now being filed across Texas.]