

THOUGHT LEADERSHIP

News

FEDERAL COURT IN TYLER REJECTS COVID-19 CLAIMS

Newsbrief

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A federal district court in Tyler recently dismissed an insured's claims for breach of contract, breach of the duty of good faith and fair dealing, and violations of the Texas Insurance Code against his insurer, Ohio Security Insurance Company ("Ohio Security"), which arose out of the insured's allegations that Ohio Security wrongfully denied his claim for coverage under the policy's business interruption and civil-authority provisions. *Sultan Hajer d/b/a Rug Outlet v. Ohio Security Ins. Co.*, No. 6:20-cv-00283 (E.D. Tex.—Tyler, Dec. 7, 2020) involved claims made by the insured, Sultan Hajer, who owns and operates a retail rug business called Rug Outlet in Tyler, Texas. When the local county judge and, later, Governor Greg Abbott issued stay-at-home orders closing all non-exempt businesses for several weeks in March and April 2020, the insured was forced to close Rug Outlet. The insured then submitted a claim under the business interruption and civil-authority provisions to Ohio Security, who rejected the claim and maintained that the policy did not apply.

Under the plain terms of the policy, the business interruption provision required "direct physical loss of or damage to property at the described premises." The insured argued that the term "physical loss" was ambiguous and not defined in the policy, so he asked the Court to give the dictionary definition of each word. On the contrary, Ohio Security argued—and the Court agreed—that the term was not ambiguous merely because the insured had a conflicting interpretation and that the term had been interpreted by Texas district courts as requiring "tangible damage to property." In turn, the Court stressed how the insured did not allege any physical damage to his property and added that monetary losses suffered while closed, or a regulation prohibiting people from patronizing a business, did not constitute a "physical alteration of the property."

As to the civil-authority provision—which required access to the business to be prohibited by a civil authority as a result of the damage to the property and civil authority taken in response to dangerous physical conditions resulting from the damage or covered cause of loss that caused the damage—the insured argued that the threat of transmission of the novel coronavirus anywhere people congregate constituted "damage to nearby property" as contemplated by the civil-authority provision. The Court noted that when interpreting civil-authority provisions similar to that in the policy at issue precedent required a causal link between the damage to any neighboring property and the act of civil authority. In this instance, no such causal link existed so the Court held that the civil-authority provision did not apply.

The insured also argued that businesses like his own had to physically change their properties to adhere to subsequent regulations, but the Court quickly struck that argument down holding the provision “requires physical damage to prompt the act of civil authority, not the other way around.”

In any event, the Court stated that, even if either of the provisions referenced above applied, the policy contained a “virus exclusion” clause that precluded coverage if the alleged damage was caused directly or indirectly by a virus, which is exactly what occurred here. As a result, the Court granted Ohio Security’s motion and dismissed the case.