

THOUGHT LEADERSHIP

News

## U.S. DISTRICT COURT FOLLOWS LINE OF CASES DISMISSING COVID-19 BUSINESS-INTERRUPTION CLAIMS

Newsbrief

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Last week, the United States District Court for the Northern District of Texas dismissed a restaurant's COVID-19 business-interruption claim, concluding that the restaurant did not adequately allege that COVID-19 caused physical damage or loss. In *Vandelay Hospitality Group v. The Cincinnati Ins. Co.*, No. 3:20-CV-1348-C, 2021 WL 2936066 (N.D. Texas [Dallas Division], July 13, 2021), Vandelay sued its insurer, The Cincinnati Insurance Company ("Cincinnati"), alleging that the shut-down orders issued in connection with COVID-19 forced it to cease its operations, resulting in business interruption and loss of business income. Vandelay alleged that such losses were covered under its policies with Cincinnati, and that Cincinnati's denial of its claim was a breach of contract.

In response, Cincinnati filed a motion to dismiss, arguing that Vandelay failed to adequately allege that the presence of COVID-19 caused any distinct, demonstrable, physical alteration of the property so as to trigger coverage under any provision of the policy.

The U.S. District Court granted Cincinnati's motion to dismiss. The District Court followed three previous district court decisions where the courts concluded that COVID-19 and related civil authority orders did not qualify as a "physical loss of or damage to property" under property insurance policies. In doing so, the District Court rejected Vandelay's arguments that COVID-19 (1) is a physical pathogen, attaches to surfaces, and alters the composition of surfaces; (2) caused direct physical loss to the property by making the premises unusable in the way that it had been used before contamination; (3) caused physical contamination of the entire insured premises; (4) infected Vandelay's employees and customers; and (5) caused a necessary suspension of operations during a period of restoration. The District Court concluded that although Vandelay may have sufficiently alleged that COVID-19 was present in its restaurant, it did not adequately allege that COVID-19 caused physical damage or loss.