

THOUGHT LEADERSHIP

News

COVID-19 CLAIM DISMISSED FOR FAILURE TO ALLEGE “PHYSICAL LOSS OR DAMAGE”

Newsbrief

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Last week, a federal judge in Houston joined the ever-growing number of courts to reject business interruption claims resulting from COVID-19 shutdowns in 2020. *LVY 5003 LLC v. Zurich Am. Ins. Co.*, No. 4:20-CV-2992, 2022 WL 4543196 (S.D. Tex. Sept. 28, 2022) involved 17 restaurants owned by local restaurant mogul Tillman Fertitta. Following existing Fifth Circuit authority, the court held, on a Rule 12(b)(6) dismissal standard, that the complaint did not allege “direct physical loss or damage” as required to make a prima facie case that the claim was covered.

The court also rejected a “civil commotion” argument, rejecting the idea that a prevailing state of public fear about COVID-19 fell within the common meaning of the phrase “riot or civil commotion” used in the policy.

Editor’s note: We have been following this case since it made Texas insurance news earlier in its life: [newsroom-news-TIN-20210928-Item9.html](https://www.martin-disiere-jefferson-wisdom.com/newsroom-news-TIN-20210928-Item9.html)

Notwithstanding a recent \$48.5 million jury verdict in a COVID-19 case in a Houston state court, this opinion holding that the presence of a virus is not “physical loss or damage” and that a pleading making those allegations does not allege a covered claim joins the large majority of results from courts in Texas.