



Jan 29, 2025

Categories:
[Publications](#)

Authors:

[Dylan J. George](#)
[Elise N. McQuain](#)
[Madison L. Weaver](#)

North Carolina Supreme Court Rules COVID-19 Business Losses Can Qualify as “Direct Physical Loss” Under Insurance Policies

***North State Deli, LLC v. The Cincinnati Ins. Co.*, 2024 WL 5100978, 908 S.E.2d 802 (N.C. 2024)**

In a recent ruling, the North Carolina Supreme Court held that business interruption losses resulting from the COVID-19 pandemic can qualify as a “direct physical loss” to property under a business property insurance policy. The court noted that, in the absence of an explicit provision to the contrary, it could not conclusively determine that the restaurants and bars’ (collectively “restaurants”) policies unambiguously excluded coverage, given that the COVID-19 pandemic and resulting government orders prevented the restaurant owners from physically using and operating their business.

COVID-19: Business/Insurance Coverage Impacts

The COVID-19 pandemic emerged in late 2019 and quickly spread globally, leading the World Health Organization to declare it a pandemic in March of 2020. As the virus rapidly spread, governments worldwide implemented various measures to control the transmission of the disease, including social distancing, restrictions on gatherings, and the closure of non-essential businesses. These orders included widespread shutdowns or capacity limits for businesses such as bars and restaurants.

During the operative time, all the restaurants carried what is known as an “all-risk” commercial property insurance policy. This type of policy covers any risk that the contract does not explicitly omit. Additionally, each of the restaurants held a commercial property insurance policy that covered the buildings and personal property against direct physical loss or damage resulting from a covered event, including all causes of loss unless explicitly excluded under

the policy. The restaurants also had “Business Income (and Extra Expense) Coverage,” which supplemented the insurance policy against lost business income sustained when the business is forced to suspend operations because of a covered loss.

Procedural History and Key Findings

In 2020, the restaurants filed a declaratory judgment lawsuit against their insurers, seeking a ruling that the COVID-19 government restrictions qualified as covered perils that caused direct physical loss under their insurance policies. The relevant question before the court was whether “direct physical loss” to property as defined in all the restaurants policies covered losses of physical use and access to their property due to COVID-19-related governmental orders. The trial court issued a judgment that the losses are covered under the applicable policies.

The trial court ultimately ruled that, since the policies did not specifically exclude the exact cause of the restaurants’ losses, the government-imposed shutdowns due to a virus must be considered a covered loss. However, the court of appeals reversed this decision, interpreting the insurance contracts to exclude such losses. The appeals court concluded that the loss of use or access to the property did not constitute direct physical loss or damage under the applicable insurance policies.

Supreme Court’s “Alien Spaceship” Analogy

On appeal, the North Carolina Supreme Court then reversed the court of appeals. The North Carolina Supreme Court ruled that a reasonable policyholder in this position could interpret “direct physical loss” to property to encompass the impact of COVID-19-related government orders that restricted the use and access to their physical premises. Interestingly, the court utilized a hypothetical scenario to illustrate its point on what constitutes a covered “risk” and covered “loss.” If an alien spaceship were to crash into a restaurant, rendering it unusable, this would clearly constitute a covered risk and loss because aliens are not an excluded cause of loss, and the building itself is damaged. On the other hand, if the aliens simply sprinkled glitter on the restaurant,

this would still be a covered risk as aliens are not an excluded cause of loss, but this would not be a covered loss since the building is still useable after a bit of vacuuming.

Although this case specifically involves “all-risk” commercial property insurance policies, the North Carolina Supreme Court’s decision marks a significant development in interpreting the scope of coverage for business property insurance policies. Not only does this expand the scope of coverage based on business interruptions to include pandemics, but it also opens the door for other sorts of business interruptions not recently considered to be viable claims for insurance coverage under a direct physical loss provision.

While the trend is still developing, most federal courts appear to be requiring a “tangible alteration” of the property for a direct physical loss to be recognized, suggesting that a loss of use or access due to a pandemic would not be a cognizable claim. If you have concerns or need further clarification on coverage questions like this, Frost Brown Todd’s [Insurance Coverage and Bad Faith](#) team is ready to assist.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.