



Texas Court of Appeals Holds that COVID-19 Does Not Constitute Physical Loss Under All-Risk Policy

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[Lloyd's Syndicate 1967 v. Baylor Coll. of Med.](#), 2025 WL 309722 (Tex. App. Jan. 28, 2025)

In yet another critical decision concerning insurance coverage for COVID-19, the Court of Appeals of Texas addressed for the first time whether the presence of COVID-19 constituted physical loss or damage to property under an all-risk policy. The court, as a matter of first impression, held that the presence of COVID-19 on a university's property did not cause "direct physical loss of or damage to" the property, and the policy as such provided no coverage.

Background and Lower Court Proceedings

The case arises from the denial of coverage to Baylor School of Medicine for business interruption and other losses associated with the COVID-19 pandemic. Multiple insurance companies insured Baylor under an all-risk policy covering "all risks of direct physical loss of or damage to property" for a term ending in October 2020. An all-risk policy is a type of policy in the property casualty market that automatically covers any risk not explicitly excluded by the policy. When the COVID-19 pandemic struck in January 2020, Baylor incurred various costs to limit the transmission of the virus and, in turn, made a claim under its all-risk insurance policies that its insurers denied. As a result, Baylor sued its insurers for breach of contract.

At trial, a jury found in favor of Baylor. Baylor's witnesses testified regarding the virus and how it adheres to surfaces. They also testified regarding vital and necessary steps Baylor took to limit the spread of the virus during the height of the pandemic. Baylor argued that its property was damaged because microdroplets of the virus contaminated surfaces of furniture, medical equipment, and the atmosphere. This made the medical school less inhabitable and

considerably more expensive to maintain. The jury agreed, finding that the damage caused by COVID-19 constituted a “direct physical loss of, or damage to” Baylor’s property. As a result, they awarded more than \$12 million in damages and attorney fees to Baylor. Baylor’s insurers appealed.

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Appellate Court’s Reasoning

On appeal, the Texas Court of Appeals reversed the trial court’s judgment, finding there was insufficient evidence to support the jury’s verdict. The insurers argued that there was legally insufficient evidence to support the jury’s verdict because the policy language required a “tangible alteration of, injury to, or deprivation of property.” The insurers relied on appellate decisions across the country that have overwhelmingly held that the presence of COVID-19 does not result in physical injury to property.

The Texas Court of Appeals began its analysis by reviewing how “physical injury” has been interpreted by the Texas Supreme Court and other jurisdictions. In particular, the court relied on the Texas Supreme Court’s decision in *U.S. Metals, Inc. v. Liberty Mut. Group, Inc.*, 490 S.W.3d 20, 24 (Tex. 2015), which addressed the meaning of “physical injury” in a commercial general liability policy. Relying on dictionary definitions of “physical” and “injury,” the Texas Supreme Court reasoned that a physical injury had to be “one that is

tangible.”

The Texas Court of Appeals further observed that courts across the country have required a “tangible alteration or deprivation of property” in cases addressing coverage for physical loss or damage to property resulting from COVID-19. *See, e.g., Terry Black’s Barbecue, L.L.C. v. State Auto. Mut. Ins. Co.*, 22 F.4th 450, 456–57 (5th Cir. 2022) (collecting cases). Considering the plain meaning of the policy language and precedent interpreting “physical injury,” the Texas Court of Appeals held that a “direct physical loss of or damage to” property requires a tangible alteration or deprivation of the property.

Applying the above interpretation of “physical injury,” the appeals court found there was legally insufficient evidence at trial to support the verdict. The court’s decision is a great read as it contains a lengthy discussion of the prevailing precedent in other jurisdictions, which similarly held that the presence of COVID-19 does not cause a physical injury or damage to property.

Key Takeaways for Insurers

- Insureds may be looking at policy language broadly to cover injuries from COVID-19 and other pandemic-related viruses. Interestingly, this Texas decision came to an opposite result [compared to a recent case in North Carolina](#). *See North State Deli, LLC v. The Cincinnati Ins. Co.*, 2024 WL 5100978, 908 S.E.2d 802 (N.C. 2024). It’s clear this is a matter for interpretation that may lead to varying results in various jurisdictions as the law develops.
- Narrowly and clearly tailoring policy language regarding the impact of biological hazards on physical property may become increasingly important as populations become more vulnerable to international pandemics, as many [epidemiologists predict](#).
- The global climate is changing rapidly, and insureds will continue to face new and different risks to their property, health, safety, and business operations. This will necessitate changes in both policy offerings and policy language.

If you have concerns or need further clarification on policy drafting and coverage considerations, our team is ready to assist. Please contact the authors or any attorney with Frost Brown Todd's [Insurance Coverage and Bad Faith](#) practice.

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