



SJC Finds COVID-19 Virus Did Not Cause Physical Loss or Damage to Restaurants

The Massachusetts Supreme Judicial Court (“SJC”) has weighed in on an insurance coverage issue that has arisen in Superior Court cases following the COVID-19 pandemic: whether businesses who were forced to limit operations during the pandemic had suffered a “direct physical loss of or damage to” property that entitled them to insurance coverage. The SJC found that they had not.

In *Verveine Corp. v. Strathmore Ins. Co.*, the plaintiff restaurant owners had insurance policies that, among other things, provided coverage for direct physical loss of or damage to covered property. The SJC found that there had been no such loss or damage to the restaurant properties from the COVID-19 virus. The Court explained that “the question is not whether the virus is physical, but rather if it has direct physical effect on property that can be fairly characterized as ‘loss or damage.’” The SJC stated that direct physical loss of or damage to property “requires some distinct, demonstrable, physical alteration of the property.” The SJC noted that there were no physical effects on the plaintiffs’ properties, as demonstrated by the fact that the restaurants continued to provide takeout and other services.

The SJC further explained that the mere presence of the virus in the air and on surfaces in the restaurants was not enough to trigger coverage, stating “[e]vanescent presence of a harmful airborne substance that will quickly dissipate on its own, or surface-level contamination that can be removed by simple cleaning, does not physically alter or affect property.” The SJC did state, however, that “saturation, ingraining, or infiltration of a substance into the materials of a building or persistent pollution of a premises requiring active remediation efforts” would be sufficient to constitute a direct physical loss or damage.

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