

# COVERAGE OPINIONS

Judicial Opinions Today - Impact On Counsel's Opinions Tomorrow

## Just-In: First Covid-19 Coverage Decision Issued

---

There are hundreds of declaratory judgment actions, pending from sea to shining sea, addressing coverage for business interruption losses caused by the coronavirus.

With so many actions floating around, we were due for the first decision soon. It has arrived.

Yesterday, Michigan Circuit Court Judge Joyce Draganchuk (Ingham County) granted the insurer's motion for summary disposition in *Gavrilides Management Company vs. Michigan Insurance Company*. At issue was coverage for restaurants that were shuttered by Covid-19-related government orders. The court concluded that no coverage is owed.

Fittingly, *Gavrilides Management Company vs. Michigan Insurance Company* -- now the *Marbury v. Madison* of coronavirus business interruption coverage -- was handed down from the bench following a Zoom hearing. The hearing is posted on YouTube.

<https://www.youtube.com/watch?v=Dsy4pA5NoPw&feature=youtu.be>

I'll keep this brief since it is challenging to address a decision from an oral hearing. Better to do so with the benefit of a transcript -- which I do not have - especially when the issues involve fine points of insurance policy language. To be sure, once the transcript gets into lawyers' hands, it will be subject to study and scrutiny that would impress a Talmudic scholar.

Here are the highlights of the Judge's decision:

The court explained that coverage is provided for actual loss of business income sustained during a suspension of operations. The suspension must be caused by direct physical loss of or damage to property.

With this as the framework, the Judge concluded as follows:

Direct physical loss of or damage to the property "has to be something with material existence. Something that is tangible. Something . . . that alters the physical integrity of property."

However, the Judge noted that the complaint does not allege any physical loss of or damage to the restaurants. Rather, it alleges loss of business due to executive orders shutting down dining in the restaurant due to the Covid-19 threat. The Judge noted that the complaint states that at no time has Covid-19 entered the restaurants through an employee or patron.

The court rejected the argument that the Virus Exclusion is "vague." The court held that the virus exclusion would apply even if direct physical loss or damage existed.

The court also observed that, while government acts are covered, they must result in direct physical loss or damage. But there was no direct physical loss or damage alleged.

Lastly, the court concluded that the plaintiff could not amend its complaint, as there is no factual development that could change that the complaint alleges loss of access to the premises and not direct physical damage to property, as required under the policy.

Admittedly, this write-up is not going to win the Pulitzer Prize for lawyer alerts. I've done better. As I mentioned, it is difficult working, sans transcript, from an oral decision issued from the bench. And, of course, a written opinion, which sets out the facts, policy language and case law is certainly most desirable. Those with a keen interest in the case will no doubt watch the video and come to their own conclusions.

Insurers can be expected to hail *Gavrilides Management Company* as support for what they have been saying all along - Covid-19 does not cause property damage and the virus exclusion applies. For sure the court's language is strong, that direct physical loss of or damage to the property "has to be something with material existence. Something that is tangible. Something . . . that alters the physical integrity of property." The court also upheld the Virus Exclusion. Although I would expect to see some decisions address challenges to the exclusion in more detail.

Look for policyholders to shrug off the decision as one that was tied to, as the court described, admissions by the insured, in the complaint, that at no time had Covid-19 entered the restaurants through an employee or patron (and the court was procedurally constrained to limit its consideration to the allegations in the complaint; although the court concluded that an amended complaint was not permitted). In addition, policyholders can be expected to argue that other states have a lower threshold for what is property damage. And, they will likely point out that the

decision does not address a multitude of other issues that have been raised in the hundreds of DJs that have been filed.

*Gavrilides Management Company* will get a lot of attention because it is the first decision addressing coverage for Covid-19 business interruption losses. But there are many more to come.

---

I hope you enjoy this issue of *Coverage Opinions*. Please forward this e-mail to any colleagues that you believe would be interested in subscribing to *Coverage Opinions* - the **free** bi-weekly newsletter that reports and provides commentary on just-issued decisions that concern numerous issues under commercial general liability and professional liability insurance policies. **Subscribe in seconds** at <http://www.coverageopinions.info/Subscribe.html>

<p><b>Randy Maniloff</b> <b>White and Williams, LLP</b> <b>1650 Market Street</b> <b>One Liberty Place, Suite 1800</b> <b>Philadelphia, PA 19103-7395</b></p>	<p><b>215.864.6311</b></p> <p><b><a href="http://www.CoverageOpinions.info">www.CoverageOpinions.info</a></b></p> <p><b><a href="mailto:Maniloff@CoverageOpinions.info">Maniloff@CoverageOpinions.info</a></b></p>
---	--