

Recent 11th Circuit Court of Appeals Decision Could Have a Positive Impact for Insurers on COVID-19 Business Interruption Claims

*On August 18, 2020, the 11th Circuit Court of Appeals rendered its opinion in **Mama Jo's, Inc. v. Sparta Insurance Company**, — Fed. Appx— 2020 WL 4782369 (11th Cir.). While not involving COVID, its interpretation of the “direct physical loss of or damage to” requirement in first-party policies could nevertheless have significant ramifications in those business income loss cases.*

The case arises from construction in front of a restaurant that caused dust and debris in the air. The restaurant made a claim under its insurance policy for cleaning costs and business income loss due to the construction.

The Appellate Court affirmed the District Court's finding of no coverage, concluding that the phrase “direct physical” requires more than the need to clean the property. It requires the damage to be “actual.”

This case will certainly have an impact on the onslaught of COVID business interruption claims. The underlying District Court opinion, which was affirmed, has been significantly relied upon by insurers in COVID coverage cases throughout the country. Of the few decisions that have come out, the majority have agreed with the reasoning of Mama Jo's. The fact that a Federal Court of Appeals has now embraced that view further supports the legitimacy of the insurers' arguments that these claims are not covered.

We do point out, however, that there is a distinguishing factor which will be argued against the rationale of Mama Jo's. There, the restaurant remained open during the period of construction. We do not, however, believe this difference would have compelled a different result. The typical scenario in COVID claims is that the businesses were closed by Governmental order with no showing of the presence of COVID. But, even if that showing were to be made, like in Mama Jo's, the “remedy” is sanitizing the property and there still would be no coverage.

KD IS HERE TO HELP

The experienced First Party Property/Business Interruption attorneys at Kaufman Dolowich & Voluck are available to assist any businesses with questions. For more information, please contact an experienced member of KD's First Party Property/Business Interruption Practice Group.