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## C A S E A L E R T

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### **U.S. DISTRICT COURT GRANTS M&W MOTION TO DISMISS PANDEMIC-BASED BUSINESS INTERRUPTION CLAIM; STATE COURT DISMISSES A SIMILAR CLAIM**

Yesterday was a good day for the insurance industry in New Jersey. Judge Kugler of the U.S. District Court for the District of New Jersey ruled in M&W's favor by dismissing with prejudice a putative multi-district class action lawsuit seeking business interruption losses on account of executive orders closing non-essential businesses in the wake of COVID-19. Shortly thereafter we learned that Judge Polansky of Camden County Superior Court had dismissed a similar claim against a different insurer. Both of these decisions are likely to be cited across the state as insurers seek release from litigation over business interruption claims prompted by pandemic-related closures and no allegation of physical loss or damage to insured property.

In [N&S Restaurant v. Cumberland Mutual Fire Insurance Co.](#), Cumberland's insured, which owns a restaurant in Millburn, filed suit in the District of New Jersey seeking business interruption coverage as a result of Governor Murphy's Executive Orders limiting the operations of non-essential retail businesses. The Complaint sought to create a class action involving all Cumberland Mutual insureds issued commercial all-risk property damage policies who suffered business income losses related to the COVID-19 pandemic in New Jersey, Pennsylvania, Delaware, and Maryland.

[Eric Harrison](#) and [Christian Baillie](#) of M&W filed a motion to dismiss the Complaint based on the absence of any "direct physical loss or damage" to insured property and the clear and unambiguous virus exclusion barring coverage for any

losses caused directly or indirectly by “any virus.” The policy’s anti-concurrent causation clause, we argued, foreclosed any argument over whether the Executive Orders were a “proximate” cause of the Plaintiff’s loss.

Judge Kugler applied the virus exclusion as written to reject the plaintiff’s claims and dismiss the lawsuit. The Court did not reach the absence of physical loss or damage.

Presiding Civil Judge Polansky of New Jersey Superior Court, Camden County, did address the argument over “physical loss or damage” in the matter of [Mac Property Group LLC et al. v. Selective Fire](#)

[and Casualty Insurance Co.](#), ruling not only that the virus exclusion barred coverage, but also that the plaintiff had failed to plead sufficient facts to establish direct physical loss or damage to covered property.

On behalf of our partners in the insurance industry, we are cautiously optimistic that yesterday’s trial court decisions – the first of their kind in New Jersey – will have a domino effect on similar litigation throughout the state. We will continue to keep you apprised of all developments in this fast-evolving area of claims litigation.

Feel free to direct any questions about these decisions to [Eric](#), [Christian](#) or any of [our partners](#).

*The Methfessel & Werbel Case Alert is published solely for the interest of friends and clients of Methfessel & Werbel and should in no way be relied upon or construed as legal advice or counsel. For specific information on recent developments or advice regarding particular factual situations, the opinion of legal counsel should be sought.*

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