

North Carolina Supreme Court COVID-19 decision in North State Deli v Cincinnati Insurance Co

29 January 2025  Felicity Pallas

On 13 December 2024, the North Carolina Supreme Court unanimously agreed that COVID-19 government-ordered business closures constitute “direct physical loss” under insurance policies that lack virus exclusions.

In the case of North State Deli v Cincinnati Insurance Co, North State Deli (NSD) was affected from March 2020 by the implementation of government closures of bars and restaurants, and limitations to carry-out, drive-through and delivery operations only. NSD’s commercial property insurance included business interruption coverage for a shutdown of operations due to “direct physical loss” not otherwise excluded by the policy.

NSD was concerned that Cincinnati Insurance Co would deny coverage, so they filed suit. The central question for this case was whether government-ordered COVID-19 closures and restrictions constituted perils covered under the policy that resulted in “direct physical loss” to property and, therefore, would require Cincinnati Insurance Co to provide cover. The initial decision was that “direct physical loss” included COVID-19 government orders unless expressly excluded from the policy, but the further decision by the Court of Appeal held that “loss of business”, in fact, did not constitute “direct physical loss” on the basis that no physical harm had been done to the premises.

The ruling was reviewed again in the Supreme Court, and NSD maintained that government COVID-19 orders limited the functions of their premises and controlled how they could physically access their space; essentially, that they had lost their direct physical use of their property which, in turn, constituted a direct physical loss. Ultimately, the court agreed and stated that a “direct physical loss” of a property includes loss of the physical use for which the property is insured. In such cases that a property is no longer usable for its insured purpose, a “direct physical loss” has occurred.

The ruling also pointed to North Carolina’s rules of contract, which include interpretation favouring policyholders and that ambiguities should be resolved in the policyholder’s favour. In this case, the court noted that Cincinnati Insurance Co could have included terms that exclude cover for viruses, as over 80% of business [insurance policies](#) do.

What does this mean for insurers?

In the wake of the COVID-19 pandemic, there have been numerous cases across different jurisdictions around the central question of whether government orders depriving access to properties results in direct physical loss.

Insurers should note that the general consensus is that government orders depriving access to properties do not amount to direct physical loss, as can be seen in the ruling on the same day of Cato Corporation v Zurich American Insurance Company; however, most importantly, the decision in [North State Deli v Cincinnati Insurance Co](#) highlighted the importance of insurers establishing unambiguous exclusions or limitations in their policies.

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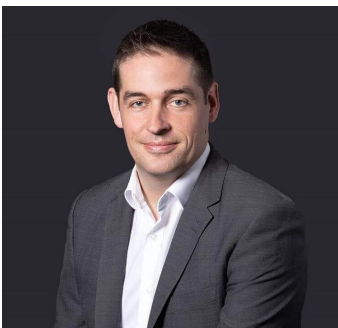


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