

One Bite at the Apple: Offensive Collateral Estoppel and COVID-19 Business Interruption Claims

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PRACTICES Insurance Recovery, Litigation

Corporate policyholders, who have monitored COVID-19 business interruption litigation over the past year, will know that reported decisions favoring insurers currently outnumber those granting relief to insureds. But fortunately, judicial rulings are not based on majority rule. To the contrary, sometimes all it takes is one substantive decision against an insurer to justify another consistent ruling on the same issue. Under the doctrine of offensive collateral estoppel, one policyholder plaintiff may seek to estop a defendant insurer from relitigating an issue that the insurer previously litigated and lost in a suit involving another party. Insureds, who have heretofore watched from the sidelines for positive developments in pending COVID-19 business interruption cases, should consider whether existing pro-policyholder decisions and the doctrine of offensive collateral estoppel could support the advancement of the insured's claims in litigation.

To date, state and federal courts in more than a dozen states have issued substantive rulings holding that insuring clauses requiring "physical loss or damage" are triggered by (1) the presence of the SARS-CoV-2 virus, which causes the disease known as COVID-19; and/or (2) pandemic-related civil authority orders, which have rendered countless insured structures and premises unusable to policyholders or their patrons over the past year.

Read the full alert [here](#).

If you have any questions about pandemic-related business interruption coverage or about insurance recovery in general, please contact one of Haynes Boone's [Insurance Coverage Practice Group](#) partners listed below.

Note: This alert was republished as an "[Expert Analysis](#)" article in *Law360*.