

Michael Scanlon, Greg Van Houten in Law360: '2 Decisions Reveal Key to Virus Insurance Coverage in NY'

January 11, 2021 Michael Scanlon, Greg Van Houten

PRACTICES Insurance Recovery

In December, two pro-insurer decisions were handed down by the U.S. District Court for the Southern District of New York on the availability of business interruption coverage for COVID-19 losses.

Fortunately for policyholders, the decisions, both of which were rendered on the pleadings, are of limited precedential value.

That is because neither case involved an allegation that the SARS-CoV-2 virus or someone with COVID-19 was actually present on covered property; instead, the policyholders in both cases argued that their loss of use of property — caused by government shutdown orders and not the actual presence of the virus — constituted covered physical loss or damage.

The court disagreed in both cases, but in doing so signaled that, where there is actual contamination, there is physical loss or damage. Thus, there is hope, and a strong legal basis for coverage, for all those policyholders in New York who are able to allege that the virus or an infected person was actually present on covered property.

And, because New York administered robust testing and contact tracing programs early in the pandemic, many policyholders in New York should be well-situated to make such allegations.

Excerpted from *Law360*. To read the full article, click [here](#). (Subscription required)