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May 27, 2022

**RECEIVED**

**May 27 2022**

**S.C. SUPREME COURT**

**Via Email**

The Honorable Patricia A. Howard  
Clerk of Court  
South Carolina Supreme Court  
P.O. Box 11330  
Columbia, SC 29211

RE: Sullivan Management, LLC v. Fireman's Fund Insurance Company, et al.  
Appellate Case No. 2021-001209  
District Court Case No. 3:30-cv-02275  
Our File No. 001101.01640

Dear Ms. Howard:

Pursuant to Rule 208(b)(7), Defendants Fireman's Fund Insurance Co. and Allianz Global Risk US Insurance Co. present the following notice of additional pertinent authorities decided after their last letter was filed on May 18, 2022.

As before, given the volume of decisions, Defendants have limited the list below to those decided by appellate courts only. Appellate court nationwide remain unanimous without a single dissent that COVID-19 and related government orders do not cause direct physical loss or damage to property.

The following authorities are pertinent to the issues discussed in Section V(A) (pages 11-35) of Defendants' brief.

**Federal Circuit Courts of Appeal:**

- *Abbey Hotel Acquisition, LLC v. National Surety Corp.*, No. 21-2609, slip op. at \*7 (2d Cir. May 27, 2022) (summary order) (“[P]hysical loss or damage” does not extend to the mere presence of COVID-19 particles in the air or on surfaces.”);
- *Royal Palm Optical, Inc. v. State Farm Mut. Ins. Co.*, No. 21-11335, slip op. at \*2-3 (11th Cir. May 25, 2022) (The “majority view is that intangible or incorporeal losses are excluded from coverage so as to preclude any claim against the

property insurer when the insured merely suffers a detrimental economic impact unaccompanied by a distinct, demonstrable, physical alteration of the property.”);

- *First Watch Restaurants, Inc. v. Zurich Am. Ins. Co.*, No. 21-10671, 2022 WL 1634571, at \*2 (11th Cir. May 24, 2022) (“Because there is no coverage for the type of purely economic damages that First Watch sought under either of its cited policy provisions, we affirm the decision of the district court.”);
- *Left Field Holdings III v. Colony Ins. Co.*, No. 21-12124, 2022 WL 1634584, at \*1 (11th Cir. May 24, 2022) (“Since losses and expenses sustained because of COVID-19 are intangible and physical loss or damage requires tangible alteration of the property, Left Field’s claimed losses and expenses are not covered under the policy.”);
- *Renaissance/The Park, LLC v. Cincinnati Ins. Co.*, No. 21-6016, 2022 WL 1596257, at \*2 (6th Cir. May 20, 2022) (“To be sure, the closure order did prevent Renaissance from opening the Park to customers, a prohibition that lamentably resulted in lost use of the Park. But that manner of loss is not tantamount to a ‘direct’ ‘physical loss.’”);

### **State Courts of Appeals**

- *GPL Enter., LLC v. Certain Underwriters at Lloyd’s*, No. 302 Sept. Term 2021, 2022 WL 1638787, at \*7 (Md. Ct. Spec. App. May 24, 2022) (“No repair, reconstruction, or replacement and no relocation could effectuate a return to in-person dining at GPL’s restaurant while the Governor’s order was in effect. Because GPL had nothing to repair, rebuild, replace, or relocate, it follows that GPL suffered no direct physical loss of or damage to property.”);
- *Massage Bliss, Inc. v. Farm Bureau Gen. Ins. Co. of Michigan*, No. 356445, 2022 WL 1591925, at \*2 (Mich. Ct. App. May 19, 2022) (“[P]laintiff, along with many Michigan businesses, were merely limited or restricted in the use of the property; there was no direct physical loss of the property.”);
- *Three Won Three Corp. v. Property-Owners Ins. Co.*, No. 356791, 2022 WL 1594828, at \*4 (Mich. Ct. App. May 19, 2022) (“Plaintiffs admitted that their restaurants were deemed essential businesses and remained open for carryout and delivery services. Thus, the trial court properly concluded that plaintiffs could not establish that an action of a civil authority prohibited access to their businesses.”); and

*GPIF Crescent Court Hotel, LLC v. Zurich Am. Ins. Co.*, No. 1-21-1335, 2022 WL 1606999, at \*4 (Ill. App. May, 20, 2022) (Plaintiff “alleged only that it lost use of its property and that it had to install various items to help contain the spread of the virus (plexiglass barriers, hand sanitizer stations, instructional stickers, etc.). As discussed in *Sweet Berry* and *Lee*, without an allegation of a change to the

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physical nature of the existing property, these allegations are insufficient to establish a physical loss.”).

Very truly yours,

A handwritten signature in black ink that reads "A. Mattison Bogan". The signature is written in a cursive style with a long horizontal flourish at the end.

A. Mattison Bogan

AMB:eh

cc: All Counsel of Record