

Direct Physical Loss or Damage Coverage Update

February 4, 2025

Direct Physical Loss or Damage – Texas

Lloyd's Syndicate 1967 v. Baylor Coll. of Med.

No. 14-22-00925-CV, --- S.W.3d --, 2025 WL 309722 (Tex. App. Jan. 28, 2025)

The Texas Court of Appeals for the Fourteenth District, aligning with the majority of rulings in other state and federal courts, reversed the trial court's judgment following a jury verdict of \$48.5 million in favor of Baylor College of Medicine (Baylor) as there was insufficient evidence to support the jury's finding that COVID-19 caused direct physical loss of or damage to Baylor's property.

In 2019, Baylor purchased commercial property insurance for the period Oct. 31, 2019 to Oct. 21, 2020. The insurance had a \$100 million primary layer with XL Insurance American insuring 50% of the risk, ACE American Insurance Company insuring 25% of the risk and eight insurers (Lloyd's Syndicate) insuring various percentages totaling 25% of the risk. In 2020, Baylor submitted claims to XL, ACE and Lloyd's Syndicate for business interruption losses associated with the COVID-19 pandemic, but its claims were denied. Baylor then sued XL, ACE and Lloyd's Syndicate.

Baylor's claims against XL and ACE were dismissed because their policies contained an exclusion for virus-related losses. Lloyd's Syndicate moved for summary judgment, arguing, among other things, that coverage was not triggered under the policies because Baylor did not sustain any "direct physical loss of or damage to its property" caused by the presence of COVID-19. The trial court denied Lloyd's Syndicate's dispositive motion, finding that a question of fact existed as to whether COVID-19, if present, caused direct physical loss of or damage to the insured's property. A jury trial was held with the jury finding that COVID-19 caused direct physical loss of, or damage to, Baylor's property. The jury awarded Baylor \$48.5 million, which was reduced by the trial court to Lloyd's proportionate share, (i.e., \$12.1 million). Lloyd's Syndicate appealed.

The appellate court reversed the trial court's judgment in favor of Baylor, noting that Baylor did not contend that the relevant policy language requiring "direct physical loss or damage to property" was ambiguous. In striving for uniformity and consistency with decisions from other courts on the same issue and taking into consideration the Supreme Court of Texas's interpretation of "physical injury," the appellate court held that "direct physical loss of or damage to" property requires a tangible alteration or deprivation of the property. Because there was legally insufficient evidence of direct physical loss or damage to Baylor's property, the jury verdict could not be sustained, and Lloyd's Syndicate was not

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liable for Baylor's losses.

The appellate court disagreed with the trial testimony of Baylor's witnesses, including one witness who likened the effect on Baylor's property caused by infected COVID-19 patrons to arsonists lighting its property on fire. The appellate court rejected that analogy and instead compared the situation to one where Baylor's patrons spill small amounts of water on the property. While the spilled water would cause no tangible alteration to the property, it could pose risks of injuries if individuals slipped on the water, and if Baylor elects to clean up the water or let it evaporate, this does not mean that the puddle causes physical loss of or damage to the floor itself. "In other words, the floor isn't physically damaged even though the floor is dangerous and Baylor incurs financial losses to make it safe."

Accordingly, given the lack of evidence of direct physical loss or damage to Baylor's property, the appellate court rendered a judgment that "Baylor take nothing."