

## **Virus Like A Natural Disaster, Nonprofit Group Says On Appeal**

Law360

Nonprofit group United Policyholders threw its support behind a dental office and the owner of furniture stores in their appeals concerning business interruption coverage for COVID-19-related losses, saying insurers are expected to cover the pandemic the same way they cover natural disasters.

United Policyholders told the Eleventh Circuit on Tuesday and the Seventh Circuit on Monday that businesses like R.T.G. Furniture Corp. — better known as [Rooms To Go](#) — and Sandy Point Dental PC are covered for government shutdown orders issued to thwart COVID-19. The inability to use the property is a physical loss covered under all-risk policies, the group said.

In illustrating its argument, the group noted that even courthouses have been deemed unsafe from the coronavirus.

“Court proceedings have to take place through video conferences. The physical use of the courthouse is impaired,” the group said. “This loss of use constitutes a ‘physical loss’ well within the ordinary meaning of those terms.”

United Policyholders previously gave its support in *Mama Jo’s Inc. v. Sparta Insurance Co.*, asking the [U.S. Supreme Court](#) to take on the issue of physical loss in a Florida restaurant owner’s suit over costs to clean dust from nearby road work. The high court in March [passed on the chance](#) to clarify whether businesses could make the same argument in seeking coverage for COVID-19-related damage.

Matthew B. Weaver of [Reed Smith LLP](#), counsel for United Policyholders in the Rooms To Go case, told Law360 on Wednesday his client is taking a different approach from Mama Jo’s. There is a difference between a restaurant overcome with construction dust and a deadly virus shutting down businesses, Weaver said.

“But courts have treated Mama Jo’s as controlling the outcome of COVID-19 business interruption cases, we think wrongfully so,” Weaver said. “United Policyholders is continuing its nationwide COVID-19 business interruption loss initiative, despite the outcome in Mama Jo’s.”

In the briefs, United Policyholders argued courts are incorrectly ruling the coronavirus must physically “alter the appearance, shape, color, structure or other material dimension” of property to be covered. The loss of use of property from physical causes is covered, United Policyholders said.

R.T.G. Furniture, which operates over [150 Rooms To Go](#) stores, and Sandy Point, an [Illinois dental office](#), are both asking the Eleventh Circuit and the Seventh Circuit, respectively, to revive their business interruption suits against their insurers. Both suits were dismissed after federal judges found no “direct physical loss or damage” to the insured properties.

United Policyholders argued there is evidence insurers weren’t “fully candid” with state regulators about virus- and pandemic-related exclusions in their policies. This left policyholders unaware until the COVID-19 pandemic that there might be a potential hole in their policies, United Policyholders said.

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The nonprofit group attacked the insurers’ position on the physical loss issue, noting decades of case law warned them loss of use was covered. Despite court pleas, insurers continue to sell broad coverage that doesn’t require or even mention “tangible alteration,” United Policyholders said.

The group told the appellate courts to “not be swayed” about costs to the insurance industry from COVID-19 losses. After every major event like Hurricane Katrina, the World Trade Center attacks and SARS, insurers sound “a false alarm” about insolvency concerns, United Policyholders said.

“Any warnings of impending doom are entirely unfounded. Financially, insurers did very well during the pandemic,” United Policyholders said. “Not only have they reported massive profits, but also they raised rates on consumers in every quarter of 2020. They are poised to do so again in 2021.”

Jonathan Lubin, counsel for Sandy Point, told Law360 on Wednesday his client welcomed the help of United Policyholders. Attempts to limit the definition of “direct physical loss” contradicts long-standing Seventh Circuit authority, according to Lubin, that demands policies be “real and not illusory.”

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“The lockdowns that Illinois businesses experienced have had real and very physical impacts on their businesses — as anyone can see just by walking around Chicago’s Loop on a given weekday,” Lubin said.

Counsel for the remaining parties didn’t respond to requests for comment Wednesday.

United Policyholders is represented by John S. Vishneski III and Kevin B. Dreher of Reed Smith LLP and George M. Plews, Gregory M. Gotwald and Christopher E. Kozak of [Plews Shadley Racher & Braun](#) in the Sandy Point case.

Sandy Point is represented by Jonathan Lubin of the [Law Office of Jonathan Lubin](#) and Charles Aaron

Silverman of Charles Aaron Silverman PC.

[Cincinnati Insurance Co.](#) is represented by Brian M. Reid, Alan I. Becker and Daniel G. Litchfield of [Litchfield Cavo LLP](#).

United Policyholders is represented by R. Hugh Lumpkin, Matthew B. Weaver and Noah S. Goldberg of Reed Smith LLP in the Rooms To Go case.

Rooms To Go is represented by Walter J. Andrews and Cary D. Steklof of [Hunton Andrews Kurth LLP](#).

Aspen Specialty Insurance Co., [Crum & Forster Specialty Insurance Co.](#) and Everest Indemnity Insurance Co. are represented by Matthew L. Gonzalez, Christine Michelle Renella and Kristian N. Smith of [Zelle LLP](#).

Evanston Insurance Co. is represented by Bennett Evan Cooper and Alan J. Perlman of [Dickinson Wright PLLC](#).

Hallmark Specialty Insurance Co. is represented by Antonio D. Morin and Gideon Reitblat of [Akerman LLP](#).

Homeland Insurance Company of New York is represented by Patricia Anne McLean of [Phelps Dunbar LLP](#).

[Maxum Indemnity Co.](#) is represented by Jonathan Freiman of [Wiggin & Dana LLP](#).

The cases are Sandy Point Dental PC v. The Cincinnati Insurance Co., case number [21-1186](#), in the [U.S. Court of Appeals for the Seventh Circuit](#) and R.T.G. Furniture Corp. v. Aspen Specialty Insurance Co. et al., case number 21-10490, in the [U.S. Court of Appeals for the Eleventh Circuit](#).

-Additional reporting by Daphne Zhang. Editing by Janice Carter Brown.