



---

Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com  
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

---

## Allianz Wants Hawaiian Souvenir Co.'s COVID-19 Suit Tossed

By **Daphne Zhang**

Law360 (August 18, 2020, 5:40 PM EDT) -- A group of Allianz insurance units urged a California federal judge to toss a suit by a Hawaiian souvenir chain seeking COVID-19 loss coverage, saying the chain stores' physical condition stayed the same before, during, and after government shutdown orders.

Allianz Global Risks US Insurance Co., National Surety Corp., and Fireman's Fund Insurance Co. said Monday that Water Sports Kauai Inc. failed to allege that any of its 12 souvenir stores experienced physical damage required to trigger coverage under the policy.

"No amount of artful pleading can convert a COVID-19 'droplet' resulting from a sneeze or a conversation into the 'direct physical loss or damage' to the property the policy requires," the Allianz insurance companies said.

The souvenir store chain sued Allianz in June after the insurer refused to cover its claim for business interruption losses from the pandemic and state-mandated closures. In its dismissal motion Monday, Allianz said that the chain lost income entirely from its own decision to respond to government orders but not due to physical damage.

Allianz said that Water Sports closed its doors "regardless of the existence or absence of COVID-19" on its properties in March and that the condition of the stores' physical properties stayed unchanged. The insurer said the chain was not able to show any repair cost for any direct physical damage.

"It is from these actions alone — the COVID-19 orders and plaintiff's understandable decision to close in response to them — that all of plaintiff's claimed losses derive, not from any direct physical loss or damage to the stores themselves," the insurers said.

Allianz continued that Water Sports' argument that "elements" of its stores were damaged by the COVID-19 orders is not sufficient to receive coverage because the chain failed to show "what was actually damaged," when and how the damage was sustained, and to "what degree it required repair."

The insurers said that COVID-19-related government orders were issued to ensure social distancing but do not arise from physical loss. The Hawaiian chain's 12 souvenir stores never lost access to properties because they were only closed to customers, and certain staff could still access the properties the whole time, Allianz said.

Actual physical damage must be the cause of the government-mandated prohibition for civil authority coverage to apply and courts have routinely held that revenue loss must be caused by a physical loss, Allianz said. A policyholder can only claim a loss of "material existence, formed out of tangible matter," it added.

The chain's contention that physical damage occurred because its stores could not conduct business and lost function also failed, since "a temporary deprivation of 'use' or 'access' to the physical property is not enough to establish a direct physical loss or damage to property," Allianz said.

The insurance units claimed that the chain cannot allege that they acted in bad faith merely because Allianz took two months to give a final coverage denial during a global pandemic, arguing that Water Sports "went silent" when asked to provide evidence of physical damage.

"Plaintiff cannot plausibly claim that Fireman's Fund failed to timely inspect the property when plaintiff failed to identify any damage to inspect," Allianz said in the motion.

Representatives for parties could not be immediately reached for comment.

The Allianz carriers are represented by Gregory George Sperla, John P. Phillips and Rob Hoffman of DLA Piper LLP.

Water Sports is represented by Alexandra Louise Foote of Wendel Rosen Black & Dean LLP; Fabrice Nijhof Vincent, Jacob Henry Polin, and Robert Jay Nelson of Lieff Cabraser Heimann & Bernstein, LLP.

The case is Water Sports Kauai Inc. v. Fireman's Fund Insurance Company et al., case number 3:20-cv-03750, in the U.S. District Court in the Northern District of California.

--Editing by Alyssa Miller.

---

All Content © 2003-2020, Portfolio Media, Inc.