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No Relief For The Inn: Business Income Losses Due To Government's Covid-19 Shutdown Orders Are Not "Physically Caused" By Covid-19 So Not Covered By Standard Commercial Property Insurance

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Addressing an issue of first impression in California, the Court of Appeal for the Second District has confirmed that businesses compelled to cease operations as a result of governmental directives issued in response to the COVID-19 pandemic cannot look to their property insurance carriers to cover the lost business income. Following the onset of the pandemic, many county health departments adopted stringent "stay at home" shutdown orders that essentially prohibited customers, guests, and most employees from entering or staying in commercial premises for a substantial period of time, often many months. In this case, The Inns by the Sea v. California Mutual Ins. Co., a hotel operator had been required to stop allowing any members of the public or non-essential employees into the premises, and essentially was ordered to cease offering overnight accommodations to overnight guests for the duration of the order. The hotel operator argued that the Business Income clause of a standard commercial property insurance policy extended to lost business income resulting from a shut-down order because the losses were attributable to a "direct physical loss of or damage to property at the premises" caused by the ubiquitous presence of the COVID-19 virus. The operator also contended that the losses caused by the shut-down order fell within the Civil Authority clause of the policy, as an action of civil authority that prohibited physical access due to direct physical loss or damage. The court of appeal sustained the trial court's grant of a demurrer on both counts, finding no basis for relief under either clause.

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