

Law360 (November 12, 2020, 5:12 PM EST) -- A Florida state judge ruled Tuesday that a fitness center's "purely economic loss" from COVID-19 and state shutdown orders is not covered by its property insurance with Markel Insurance Co., saying "insurance companies cannot bear the burden of this crisis."

Circuit Court Judge E. Lamar Battles said Tuesday that Dime Fitness LLC, doing business as [Anytime Fitness](#), failed to allege property damage. The gym's loss was entirely financial, which does not satisfy the coverage precondition for direct physical loss or damage, the judge said.

"This court is sympathetic to the plight of so many business owners in the wake of the COVID-19 pandemic. Yet, this court cannot allow sympathy to cloud its review of the plain meaning of an insurance policy," the judge told the gym, which had to shut down because of state-mandated closures in March.

Insurance companies should not be left to shoulder the burden of the pandemic when their policies do not cover simple revenue loss resulting from COVID-19, Judge Battles added.

The fitness center wrongly read the policy's civil authority provision as requiring only "damage," instead of physical damage or loss, the judge said, finding that the gym could not show any property damage as it has asserted that there was no contamination of COVID-19 on or near its property.

A reasonable reading of the policy's civil authority provision is that the coverage precondition — "damage to property other than property at the described premises" — is referring to the physical property instead of "intangible property such as money," Judge Battles said.

Additionally, the policy's virus exclusion plainly bars coverage as the government closure orders were issued in response to the COVID-19 virus, which is excluded by the policy, and it is not a separate event.

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"Because the executive order was dependent upon the existence of COVID-19, the concurrent causation rule does not apply here," the judge said.

Counsel for the fitness center did not respond to calls seeking comment. Representatives for Markel Insurance could not be immediately reached for comment Thursday.

The gym is represented by Ronald Scott Haynes of [Christopher Ligorini & Associates](#) and James L. Magazine of The Law Office of [Lucas & Magazine](#).

The insurer is represented by Timothy M. Strong, Vijay Gibran Brijbasi and Alan J. Perlman of [Dickinson Wright PLLC](#).

The case is Dime Fitness LLC v. Markel Insurance Co., case number 20-CA-5467, in the 13th Judicial Circuit Court of the State of Florida.

--Editing by Alyssa Miller.