



# Riker Danzig Secures Dismissal in COVID-19 Contamination Case

Insurance and Reinsurance Counsel [Casey A. Boyle](#) successfully secured a Motion to Dismiss for client Mitsui Sumitomo Insurance Company of America (“MSI”) in a lawsuit brought in New Jersey Superior Court by Highgate Hotels LP seeking \$600 million in insurance coverage from MSI and its other insurers for losses it allegedly sustained due to the COVID-19 pandemic.

In ruling for MSI and the other defendants on the Motion to Dismiss, Judge Wilson concluded that under either New York or New Jersey laws, the presence of COVID-19 on Highgate’s properties does not constitute “direct physical loss or damage,” as required by the relevant insurance policies to trigger coverage. Judge Wilson explained that he found “neither a structural alteration, nor a severe physical contamination of [Highgate’s] properties,” and that “[a]s determined by ‘nearly every court’ addressing this same issue, ‘loss of use of a premises due to a governmental closure order does not trigger business income coverage premised on physical loss to property.’” He cited Michael Cetta, Inc. v. Admiral Indemnity Co. in New York federal court.

Further, with respect to MSI (and Highgate’s other excess carriers), Judge Wilson also dismissed with prejudice Highgate’s claims for coverage under the Cancellation of Bookings or Contagious Disease provisions, concluding that those provisions are subject to program sublimits of \$1,500,000 and \$5,000,000, respectively, and therefore could never reach the attachment point of the insurance policy issued by MSI.

Riker Danzig’s Mitsui Sumitomo team is led by Firm Co-Chairman [Brian E. O’Donnell](#), with Partner [Maura C. Smith](#) providing regular counsel.

This case was covered in *Law360* on [October 6, 2021](#) and [September 24, 2021](#).

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