

legal memo

Barcelona, February 15th, 2021

Insurance companies may have to face their clients' losses of profit resulting from COVID-19 lockdown measures

The Provincial Court of Girona has passed a judgment, which is the first of its kind in Spain. The decision obliges an insurer to indemnify the loss of profit suffered by the insured client as a result of the lockdown measures adopted by the Government.

On February 3, 2021, the Provincial Court of Girona **s ordered an insurance company to indemnify an insured for the loss of profit caused by the closure of its premises as a result of the COVID-19 sanitary restrictions**

Besides the insurer's condemn to pay for the loss of profit suffered due to lockdown measures, the most relevant aspect of the judgment is that **it declares null and void the exclusion of coverage for activity lockdowns imposed by the authorities, unless expressly accepted by the insured party.**

Spanish previous case-law had excluded COVID-19 damage from indemnity coverage. This ruling **clears the way for a large number of claims from those insured** forced to close their business during the course of the pandemic.

The insurance policy excluded the loss of profit derived from restrictions imposed by Public Authorities and those due to force majeure.

In the case examined, the insured had subscribed an insurance policy with a "Loss of profit/Business stoppage", damage coverage clause. This provision contemplated a daily compensation of € 200, up to a maximum of 30 days.

However, the Policy General Conditions stated that *"we do not cover losses produced, caused, derived or resulting from limitations or **restrictions imposed by any Public Body or Authority**, or by any other case of force majeure, including seizures or destruction, to the repair of damages or the normal development of the business activity"*.

The Provincial Court of Girona considers the exclusion null and void, as it had not been expressly accepted by the insured party, besides being against the "natural content" of the policy.

The Provincial Court of Girona holds that the exclusion clause is a **limiting clause** of the insured risk, instead of a *delimiting* clause.

The difference is crucial since, according to Article 3 of the Insurance Contract Law, **to be valid a limiting clause must be expressly accepted by the insured party**. Specifically, the Court establishes that it must a) be highlighted in a special way and b) be expressly accepted in writing.



Why is this judgment important?

This judgment **opens the door to new potential claims from companies damaged by COVID-19 measures. The insured will be claiming compensation from their insurance companies within the framework of "Loss of Profit" policies**, despite those policies not expressly providing coverage for pandemics or, in certain cases, even excluding it, whenever exclusions were not expressly accepted by the policyholder.

This is the first judgment of its kind, and as it always occurs in such cases, the decision adopted by the Court has been conditioned by the specific wording of the policy, as well as by the circumstances of the particular matter, and cannot be automatically generalized to other insurance contracts. In order to determine which contracts might benefit from the new criterion, **a detailed legal is needed.**

Nevertheless, we can expect that the protective position adopted by the Provincial Court of Girona will set a precedent for future rulings in similar circumstances.

We remain at your disposal for any questions you may require.

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