

## Versace Owner Says Routine Cleaning Can't Stop COVID Harm

By Hailey Konnath

*Law360 (March 23, 2021, 11:19 PM EDT)* -- The fashion giant behind luxury brands Versace, Jimmy Choo and Michael Kors on Tuesday hit several insurers including Zurich and Liberty Mutual with a lengthy amended complaint claiming it's owed coverage for the more than \$1.2 billion in COVID-19 losses, in part because it suffered physical damages and routine cleaning can't actually kill the virus.

Capri Holdings Ltd. initially sued Zurich American Insurance Co., XL Insurance America Inc., Mitsui Sumitomo Insurance Co. of America, Liberty Mutual Fire Insurance Co., Allianz Global Corporate and Specialty SE, and AIG Specialty Insurance Co. in January, telling a New Jersey state court that the company suffered "catastrophic losses" of more than \$1 billion during the pandemic. The insurers have illegally refused to cover those losses under various "all-risk" commercial property insurance policies, Capri alleged.

In Tuesday's beefed-up filing, Capri unleashed a deluge of scientific studies on COVID-19 that it said show the virus can't be removed or eliminated from properties by routine cleaning and has been shown to cause physical damage to materials like cloth, fabric and textiles. The virus made Capri's stores and boutiques "uninhabitable, unsafe and unfit for their intended uses," the company said, likening the virus to asbestos, ammonia or salmonella outbreaks.

Specifically, Capri said it experienced direct physical loss of or damage to its property in several ways. More than 600 Capri employees tested positive for COVID-19 through the "certain or virtually certain" presence of the virus at its properties, it said. On top of that, state, local and agency governmental orders drastically limited the company's use of its properties and at certain points shut them down completely, Capri said.

Capri was also forced to modify behaviors to reduce or minimize virus transmission, it said. And its property was also damaged by the actual physical presence of the coronavirus on door handles, clothing, clothing racks, miscellaneous surfaces and in heating and air conditioning systems, according to the complaint.

"Simply put, the physical loss of or damage to Capri's and the fashion industry's stores and boutiques has negatively impacted sales and shuttered one storied fashion brand after another," Capri said.

And rather than stepping up and honoring their promises to cover business interruption stemming from the pandemic, the insurers have pocketed their premiums and failed to make good on their coverage obligations, Capri claimed.

The arguments outlined in Tuesday's filing could be a potential avenue around *Mama Jo's v. Sparta*

Insurance Co., a heavily cited decision in which the Eleventh Circuit held that policyholders must show their properties required physical repairs to constitute direct physical loss. A number of insurers have pointed to that ruling in shooting down COVID-19 insurance cases like Capri's.

A slew of retailers, restaurants, medical offices and venues have gone after insurers for denying coverage of COVID-19 claims in the last year. More than 1,500 such cases have been filed since the beginning of the pandemic, according to data from the University of Connecticut's Insurance Law Center.

Zurich alone has fielded 110 COVID-19 cases, according to the law center's COVID-19 coverage litigation tracker. Earlier this month, the owner of Motor City Casino Hotel claimed its Zurich affiliate insurer owes it \$270 million for COVID-19-related losses after the casino had to shut down and change its cleaning operations.

The presence of coronavirus made certain areas like the buffet and banquet hall unsafe, the casino owner said, "just as if asbestos, cat urine, ammonia, fumes or a salmonella outbreak was in the air or on surfaces."

Last week, gaming industry giant Caesars Entertainment Inc. dragged more than 36 property insurers to Nevada state court, alleging the carriers should pay for its over \$2 billion in pandemic-related losses after it gave COVID-19 sick pay to over 15,000 employees and had more than 2 million cancellations.

Also last week, Bradley Hotel Corp., the owner of an Illinois Quality Inn & Suites urged the Seventh Circuit to revive its proposed class action alleging Aspen Specialty Insurance Co. is responsible for its COVID-19 losses. Bradley said that its inability to use the hotel's restaurant and convention center was clearly covered by losses under Aspen's all-risk policy.

Earlier this month, the owners of the Sacramento Kings and its downtown arena, plus a nearby hotel and shopping complex, alleged Factory Mutual Insurance Co. owed \$850 million for pandemic-related losses in California federal court.

Counsel for Capri and representatives for the insurers didn't immediately return requests for comment late Tuesday.

Capri is represented by Joseph D. Jean, Scott D. Greenspan, Janine M. Stanisz and Benjamin D. Tievsky of Pillsbury Winthrop Shaw Pittman LLP and Richard H. Epstein and Victor J. Herlinsky Jr. of Sills Cummis & Gross PC.

Zurich is represented by John A. Mattoon Jr. of Ford Marrin Esposito Witmeyer & Gleser LLP.

Counsel information for the other insurers wasn't immediately available Tuesday.

The case is Capri Holdings Ltd. v. Zurich American Insurance Co. et al., case number c-000021-21, in the Superior Court of the State of New Jersey, County of Bergen.

--Additional reporting by Daphne Zhang, Shawn Rice and Jeff Sistrunk. Editing by Michael Watanabe.