

Chattanooga Professional Baseball LLC v. National Casualty Co.

Year: 2020

Court: United States District Court for the District of Arizona

Case Number: 2:20-cv-01312-DLR

In its brief, UP opposed a Motion to Dismiss a COVID-19 Business Interruption Claim by National Casualty Co. This case involves the application of a Virus or Bacteria Exclusion which was drafted by insurance industry drafting organizations, the Insurance Service Office, Inc. (“ISO”) and the American Association of Insurance Services (“AAIS”). ISO and AAIS, on behalf of the Insurance Companies, sought and obtained regulatory approval to sell insurance policies containing this exclusion.

Before their member-companies could sell policies containing the exclusion they drafted, however, ISO and AAIS had to secure approval of that exclusion from state regulators. UP argues that in the course of so doing, ISO and AAIS, on behalf of their members, misrepresented to regulators that the Virus or Bacteria Exclusion was a clarification of coverage, because, according to ISO and AAIS, existing standard property forms did not cover loss from “disease-causing agents.” This was not true and ISO and AAIS knew it was not true, but they also knew a “clarification” of coverage would draw less regulatory scrutiny and would not lead regulators to reduce premium rates. This gambit worked: regulators approved the new exclusion with no reduction in rates.

UP argues that, given these facts, and to preserve the integrity of the insurance regulatory process, the Insurance Companies must be estopped from enforcing the Virus or Bacteria Exclusions.

***Motion for leave denied**

This brief was drafted and submitted pro bono by Richard Lewis and John Ellison of Reed Smith LLP and Randall Udelman of Udelman Law Firm, P.L.C.

