United Policyholders
Empowering the Insured

Chloe’s Cafe v. Oregon Mutual Insurance Co.

Year: 2020
Court: United States District Court Northern District of California
Case Number: 3:20-cv-05467-LB

In its brief, UP opposed a Motion to Dismiss a COVID-19 Business Interruption Claim by Oregon Mutual Insurance Company. Specifically, UP address the question of whether “direct physical loss or damage” occurs when the proliferation of a deadly virus and ensuing government closure orders deprive a policyholder of use of covered property.

UP points out that California courts have long adhered to the commonsense position that property is physically lost or damaged when its use or function is materially impaired by a fortuitous peril, even if the property’s basic structure remains intact. Further, settled California law confirms that noxious substances that compromise the safety of property give rise to physical injury for purposes of insurance coverage.

UP advances its argument in the following manner:

1. Physical Property Suffers “Direct Physical Loss or Damage” When a Fortuitous Peril Compromises the Property’s Use or Function
2. The “Physical” Injury Requirement Only Guards Against Intangible or Non-fortuitous Losses, Not Unexpected Loss of Use of Real or Personal Property
3. Damage to the Usability of Property Due to a Viral Pandemic and Related Government Orders Constitutes Direct Physical Loss and Damage
4. The Federal Precedents Oregon Mutual Invokes are Inapposite and Unpersuasive
5. Oregon Mutual Cannot Credibly Oppose Coverage for a Viral Pandemic Under a Policy with No Virus Exclusion

This brief was drafted pro bono by David Goodwin and Sylvia Huang of Covington & Burling LLP

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