

Dakota Girls, LLC et.al., v. Philadelphia Indemnity Ins. Co.

Year: 2021

Court: United States Court of Appeals for the Sixth Circuit

Case Number: 21-3245

In its brief, UP tackle a COVID-19 business interruption claim on behalf of Dakota Girls. Philadelphia IIC promised to insure business income if Dakota Girls suffered “physical loss of or damage to” its property. We argue that the disjunctive “or” shows that there are two bases for coverage: “physical loss of” the property or “physical damage to” the property. When a deadly pandemic prevents someone from physically using the property as it was intended, ordinary people would describe that as a “physical loss of” the property. UP highlights the following points to evidence our claims.

- I. Decades of case law warned insurers that this language is broad and not limited to tangible harms.
- II. The better-reasoned Covid-19 cases follow the pre-pandemic consensus.
- III. Mastellone and Universal Image are not persuasive.

This brief was authored pro bono by George M. Plews, Gregory M. Gotwald, Christopher E. Kozak of Plews Shadley and John Ellison and Richard Lewis of Reed Smith LLP