

Dakota Ventures, LLC v. Oregon Mutual Ins. Co.

Year: 2020

Court: United States District Court District - District of Oregon

Case Number: 3:20-cv-00630-HZ

In its brief, UP, along with NIVA, opposed a Motion to Dismiss and argued that contamination, suspected contamination, and/or the imminent threat of contamination by SARS CoV-2 that result in the suspension of business operations can constitute “physical loss of or damage” under a property insurance policy. Structural alteration of the property is not required for “physical loss of or damage” where the property can no longer serve or is unsafe for its intended purpose. UP points out that Defendant chose not to define the phrase “direct physical loss of or damage to” in the policy issued to Plaintiff. Oregon law is clear that structural alteration of covered property is not a necessary element of “direct physical loss of or damage,” especially where the insured property is otherwise rendered unusable or unusable for its intended purpose. In addition, UP argues that contamination itself, such as the presence of a noxious or disease causing agent in and around the insured property, can constitute “direct physical loss of or damage to” property, and business interruption coverage may be triggered where contamination of insured property – even if the contamination is merely presumed or imminent – causes a “necessary suspension” (either completely or in part) of the insured business’s “operations.”

This brief was drafted pro bono by Seth Row and Katelyn Fulton of Miller Nash Graham & Dunn LLP