

Legal Sea Foods, LLC. v. Strathmore Ins. Co.

Year: 2021

Court: United States Circuit if Appeals fir the First Circuit

Case Number: 21-1202

In its brief, UP weighs in on a COVID-19 matter for Legal Sea Foods whose business interruption policy did not include a virus exclusion. UP argues that the lower court in this case erred when it states the COVID-19 virus does not impact the structural integrity of property in the manner contemplated by the Policy, and thus, cannot constitute ‘direct physical loss of or damage to’ property. A virus is incapable of damaging physical structures because “the virus harms human beings, not property.” Even though prior Massachusetts authorities have understood that less tangible substances on or in properties such as odors can cause physical loss of or damage to property, the District Court disregarded those decisions, instead focusing on SAS International, Ltd. v. General Star Indemnity Co., a key case that leads UP to these two points.

I. THE POLICYHOLDER’S INTERPRETATION IS SUPPORTED BY EVIDENCE THE INSURANCE COMPANY INTENDED COVERAGE FOR VIRUS-CAUSED BUSINESS INTERRUPTIONS AND DELETED THE VIRUS EXCLUSION BECAUSE IT KNEW POLICYHOLDERS EXPECTED THIS COVERAGE

II DECADES OF CASE LAW WARNED INSURERS THAT THE CLAUSE “PHYSICAL LOSS OR DAMAGE” IS BROAD AND NOT LIMITED TO “DISTINCT, DEMONSTRABLE, PHYSICAL ALTERATION” TO PROPERTY

This brief was authored pro bono by John Ellison, and Luke Debevec of Reed Smith LLP