

Motiv Group, Inc. v. Continental Casualty Co.

Year: 2021

Court: United States District Court Central District of California Western

Case Number: 3:20-cv-08206

In its brief, UP reasons that under California law, real and personal property sustains “direct physical loss or damage” when the proliferation of a deadly virus and ensuing government closure orders deprive that property of its intended use. Its reasoning is that California has set a precedence of adherence to the “common sense” position that property that 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.

UP argues these five main points

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 CCC invokes are inapposite and unpersuasive
5. CCC cannot credibly oppose coverage for a viral pandemic under a policy with no virus exclusion

David Goodwin and Sylvia Huang of Covington and Burling LLP