

Nostalgic Partners LLC (MiLB) v. Philadelphia Indemnity Insurance Co.

Year: 2020

Court: United States District Court for the Eastern District of Pennsylvania

Case Number: 20-cv-03346-ABB

In its brief, UP, along with the National Independent Venue Association (NIVA), opposed a Motion to Dismiss a COVID-19 Business Interruption Claim by Philadelphia Indemnity Insurance Co.

UP and NIVA discuss the application of a Virus or Bacteria Exclusion and whether insurers misrepresentations that property insurance policies had not historically been a source of cover for “disease-causing agent” should estop the industry from enforcing the exclusion. UP and NIVA show that

ISO and AAIS have admitted that, as insurance industry drafting organizations, it is their job to monitor developments in the common law, and therefore that they clearly knew at the time of their representations about the exclusion to regulators that:

1. there were 18 decisions finding that contamination with disease-causing agents amounts to physical loss of or damage to property, and
2. there were no contrary decisions.

UP and NIVA provide additional regulatory history showing that member insurance companies well understood that ISO and AAIS deceived regulators in the course of securing approval for the Virus or Bacteria Exclusion.

Second, UP and NIVA argue that, according to case law, “physical loss or damage to property” occurred. They note that the Pennsylvania Supreme Court recently recognized that COVID-19, because of its characteristics, has caused widespread damage to property in Pennsylvania, because it renders such

property unfit and unsafe for its intended use. Further, they discuss the authority holding that temporary conditions that abate naturally – such as infusion with ammonia fumes, smoke, and dust – nonetheless cause physical loss of or damage to property.

This brief was drafted pro bono by John N. Ellison and Richard Lewis of Reed Smith LLP