Rising Dough, Inc. v. Society Insurance

Year: 2020
Court: United States District Court - Eastern District of Wisconsin
Case Number: 2:20-CV-00623-JPS

In its brief, UP, along with NIVA, opposed a Motion to Dismiss and argued that the unsuitability of a property for its intended purpose resulting in the suspension of business operations can and did constitute "physical loss of" the insured property under the Policies issued by Society. 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. Wisconsin has recognized that the diminution of value of something, including through the failure of something to sustain its "essential functionality," can constitute a physical loss. Further, Wisconsin courts have also recognized that physical loss may take place even if the structure of covered property remains unchanged or is rendered unsuitable for its intended purpose. In addition, UP argues that infestation 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 infestation of insured property – even if the infestation 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 Christina Phillips of Merlin Law Group.

The information presented in this publication is for general informational purposes and is not a substitute for legal advice. If you have a specific legal issue or problem, United Policyholders recommends that you consult with an attorney. Guidance on hiring professional help can be found in the "Find Help" section of www.uphelp.org. United Policyholders does not sell insurance or certify, endorse or warrant any of the insurance products, vendors, or professionals identified on our website.
Source: https://uphelp.org/amicus-briefs/rising-dough-inc-v-society-insurance/ Date: October 7, 2026