

Sandy Point Dental, P.C., v. The Cincinnati Ins. Co., Inc.

Year: 2021

Court: United States Court of Appeals for the Seventh Circuit

Case Number: 21-1186

In its brief, UP weighs in on the uncontrolled spread of SARS-COV-2 (“coronavirus”) throughout Illinois. We argue that COVID, like a spreading wildfire, constitutes a natural disaster that insurance should cover. Businesses that were habitable and safe for their ordinary and intended use one day now have become unsafe for their ordinary and intended use due to the infiltration of the COVID-19 disease. The inability to use property because it has become unsafe due to a physical condition outside the policyholder’s control is the exact type of “physical loss” of property the “all-risk” insurance policy was purchased and sold to combat.

It is undeniable that the policyholder here, Sandy Point, sustained losses because of the pandemic. In an effort to avert illness and injury to citizens and to slow or prevent community spread of the coronavirus—which itself is a tangible, physical thing—Illinois Governor Pritzker issued Executive Orders that required the closure of properties, including Sandy Point’s properties. These orders recognize that the “continuous presence of the coronavirus on or around Plaintiff’s premises has rendered the premises unsafe and unfit for its intended use and therefore caused physical property damage or loss” and verify what is apparent to all: the presence of coronavirus on or around Sandy Point’s premises rendered the premises unsafe and unfit for their intended use.

This brief was authored pro bono by John S. Vishneski III, Kevin B. Dreher of Reed Smith LLP and George M. Plews, Gregory M. Gotwald, Christopher E. Kozak of Plews Shadley Racher & Braun