

Santo's Italian Cafe v. Acuity

Year: 2021

Court: United States Court of Appeals for the Sixth Circuit

Case Number: 21-3068

In its brief, UP combats Acuity's argument that in order to trigger coverage, there must be a "tangible alteration" of the business. UP does not share that view and urges the court to broaden the meaning of physical loss to include damage that renders property unsafe or unusable, even without visible, tangible, or structural damage. UP argues the following four points:

I. Decades of case law warned insurers that this language is broad and not limited to tangible harms.

II. The better-reasoned Covid-19 cases follow the pre-pandemic consensus.

III. Mastellone and Universal Image are not persuasive.

IV. The Court should remand for discovery on whether regulatory estoppel bars Acuity from enforcing the virus exclusion.

This brief was authored pro bono by George M. Plews, Gregory M. Gotwald, Christopher E. Kozak of Plews Shadley Racher & Braun LLP and John Ellison and Richard P. Lewis of Reed Smith LLP