Serendipitous, LLC/Melt v. The Cincinnati Insurance Company

Year: 2020
Court: United States District Court for the Northern District of Alabama
Case Number: 20-cv-00873-MHH

In its brief, UP opposed a Motion to Dismiss a COVID-19 Business Interruption Claim by The Cincinnati Insurance Company. UP argues that the presence, suspected presence, or the imminent threat of the presence of the deadly SARS-CoV-2 virus that results in the suspension of business operations can constitute "direct" "accidental physical loss" or "accidental physical damage" under Defendant's property insurance policy. Neither structural alteration nor permanent alteration of the property are required for "physical loss" or "physical damage," where the property can no longer serve, or is unsafe for, its intended purpose.

UP points out that Courts have widely rejected Defendant's interpretation of the coverage grant. Defendant chose not to define the phrase "accidental physical loss or accidental physical damage to" in the policy issued to Plaintiffs. Under governing principles of Alabama law, the presence of a noxious or disease-causing agent in and around the insured property, such as the SARS-CoV-2 virus, can constitute "accidental physical loss or accidental physical damage" to property, and business interruption coverage may be triggered where infiltration into insured property causes a necessary suspension (either completely or in part) of the insured business's operations.

This brief was drafted and submitted pro bono by Seth Row of Miller Nash Graham & Dunn LLP and Dylan Black and Emily Ruzic of Bradley Arant Boult Cummings LLP

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