

TJBC, Inc. v. The Cincinnati Ins. Co. Inc.

Year: 2021

Court: United States Court of Appeals for the Seventh Circuit

Case Number: 21-1203

In its brief, UP breaks down the meaning of property in the context of COVID-19. In ascertaining the meaning of the phrase “direct physical accidental loss or damage” to property, it is critical not to minimize the significance and legal import of the word “property.” At law, a thing is not “property” unless and until legal rights attach to it:

There is nothing which so generally strikes the imagination, and engages the affections of humankind, as the right of property; or that sole and despotic dominion which one [person] claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.

Whatever concept of property one adopts, the right and ability to use the property is at its core. An early listing of the bundle of rights for example, includes: (1) the right to possess; (2) the right to use; (3) the right to manage; (4) the right to the income; (5) the right to capital; (6) the right to security; (7) the power of transmissibility; (7) the absence of term; (8) the prohibition of harmful use; (9) liability to execution; and (10) residuary character.³ The courts have long agreed that the concept of “property itself, in a legal sense, is nothing more than the exclusive right ‘of possessing, enjoying and disposing of a thing,’ which, of course, includes the use of a thing.” UP goes on to argue these three points:

I. Properly Construed, Cincinnati’s Property Policies Provide Coverage for the Loss of Use of Property Sustained by Plaintiffs

II. Decades of Case Law Put the Insurers on Notice that “Physical Loss” Is Broad and Not Limited to Tangible Damage

III. The Court Should Not Be Swayed by Self-Serving Warnings About Ruining the Insurance Industry—Insurers Make These Claims After Every Disaster, and They Are Always Overstated

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