

Chicago Daily Law Bulletin: Business Interruption Suit Can Proceed

This COVID-19 case will go on: Cook County Circuit Court Judge Raymond W. Mitchell denied a motion to dismiss a business interruption case last Thursday, the latest development in a national effort to determine whether the presence of the coronavirus causes “physical loss or damage” for insurance purposes.

JDS Construction Group LLC, a construction management company based in New York City along with construction developer 9 Dekalb Fee Owner LLC, filed a coverage lawsuit against Chicago based insurance company Continental Casualty Co. over losses from the shutdown of a condominium tower project in the borough of Brooklyn in New York City.

The plaintiffs are both insured under a builders risk insurance policy through Continental Casualty.

Mitchell denied the insurance company’s motion to dismiss the policyholder’s first amended complaint, giving the green light to move forward with a trial.

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“There’s not a single appellate decision on COVID-19 as of yet in any state court,” said Robin Cohen, chair of Cohen Ziffer Frenchman & McKenna LLP in New York and one of the plaintiffs’ attorneys.

“There was only one federal appellate court decision in the 8th Circuit, and in that case, the policyholder didn’t allege the virus was on the property, where we did,” she added.

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