

Law.com Insurance Coverage Law Center: Court Refuses to Dismiss Business Interruption Suit

Last week an Illinois court refused to dismiss a COVID-19 business interruption lawsuit led by construction development and management companies against a CNA Financial Corp. unit stating that the plaintiffs had alleged evidence of physical loss or damage, which is covered under the policy. The case is *JDS Construction Group, LLC and 9 Dekalb Fee Owner LLC v. Continental Casualty Co.*

According to the ruling, JDS Construction group, and a construction developer, 9 Dekalb Fee Owner LLC, led a business interruption lawsuit against Continental Casualty Co. Both companies were insured under a builders risk policy covering March 2019 to June 2022.

In the refusal to dismiss the case, the court said that the plaintiffs alleged that the virus caused the direct physical loss or damage that is required for coverage under the policy. The ruling said that the complaint alleged that “the COVID-19 droplets or nuclei were present on solid surfaces and in the air at insured property and that the virus, a physical substance, has attached and adhered to plaintiffs’ properties.”

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The all-women team representing the plaintiffs included Robin Cohen, member of the Insurance Coverage Law Center’s Editorial Advisory Board and chair of Cohen Ziffer Frenchman & McKenna, and partners Jillian Raines and Meredith Elkins, and counsel Tali Epstein.

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