

Minnesota Court Rejects Policyholder's Contention That COVID-19 Is A Covered "Pollution Condition" Under Policy

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A Minnesota federal district court dismissed a healthcare provider's COVID-19-related coverage suit, finding that the COVID-19 virus is not a "pollution condition" under the policy. *Essentia Health v. ACE American Ins. Co.*, 2021 WL 2117241 (D. Minn. May 25, 2021).

After state orders required Essentia to suspend non-essential medical services, the company sought insurance coverage for the \$59 million it allegedly lost in revenue. The Premises Pollution Liability Policy covered loss resulting from "[f]irst-party claims arising out of . . . 1) a 'pollution condition' on, at, under or migrating from a 'covered location'; [or] 2) an 'indoor environmental condition' at a 'covered location.'" Essentia argued that COVID-19 is a pollution condition because it is a "contaminant" or "irritant." ACE denied coverage and, in ensuing litigation, moved to dismiss the complaint.

The court granted ACE's motion, ruling that the virus was not a "pollution condition" under the policy. The court noted that while "[i]t may be reasonable . . . to understand the definition of 'pollution condition'—in isolation—to encompass viruses," that "understanding becomes unreasonable" in light of other policy provisions. In particular, the court explained that the policy defined "indoor environmental condition" to include viruses and bacteria, but specified that coverage for such losses was limited to first-party remediation costs and did not encompass business interruption losses. The court reasoned that inclusion of "virus" in the indoor environmental definition, but not the pollution condition definition, indicated the parties' intent to limit coverage for virus-related losses to first-party remediation costs. The court declined to consider Essentia's "reasonable expectation" or estoppel arguments, noting that where, as here, policy language is unambiguous, consideration of extrinsic evidence is not warranted.

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