

Minnesota Court Rules That Allegations Of COVID-19 Contamination Are Sufficient To Withstand Dismissal Of Coverage Suit

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Addressing a matter of first impression under Minnesota law, a Minnesota trial court ruled that allegations of actual contamination of the COVID-19 virus on the insured premises were sufficient to withstand the insurer's dismissal motion. *Life Time, Inc. v. Zurich Am. Ins. Co.*, No. 27-CV-20-10599 (Minn. Civ. Ct. Oct. 7, 2021).

Life Time sought coverage under a builder's risk policy for losses incurred after it was forced to cease numerous construction projects. It alleged that infiltration of the virus onto its construction sites, as well as shut down orders, required cessation of work and resulted in business losses. The court denied the insurer's motion to dismiss, ruling that under Minnesota law, Life Time alleged facts which, if proved, could support a finding of direct physical loss.

The court relied on Minnesota decisions finding coverage where contamination of property resulted in a loss of function or value. While those decisions involved contamination by asbestos, pesticide and smoke, the court deemed them persuasive authority for the proposition that "structural damage to property" is not required to establish direct physical loss.

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