

Ill. Judge Hands Society Insurance COVID-19 Coverage Wins

By **Shawn Rice**

Law360 (August 27, 2021, 6:19 PM EDT) -- Society Insurance has escaped having to cover multiple Illinois businesses' COVID-19 pandemic losses, after a state judge ruled the presence of the coronavirus didn't cause physical loss or damage to their properties.

Cook County Circuit Judge Moshe Jacobius issued nearly identical rulings Aug. 24 in suits led by Station Two LLC and StefaniManagement Services Inc., saying their allegations are little more than "it's more than likely than not" that the virus "somehow, somehow ended up" at their restaurants and bars.

"Since the existence of the particles is not visible to the naked eye and cannot be seen or felt, any purported damage is not 'physical' in nature," Judge Jacobius said, tossing the suits.

Laura A. Foggan of Crowell & Moring LLP, counsel for Society, told Law360 in an emailed statement that the insurance company "was gratified" that the Illinois court correctly applied the terms of the policies in these two rulings, as well as 15 others entered in similar coverage disputes.

"While these times are undeniably challenging for many of Society's policyholders, and all businesses impacted by the pandemic, the present circumstances do not alter the terms of Society's insurance contracts or create insurance coverage for losses that fall outside those contracts' terms," she said. "It is the insurance contracts that control."

The business owners claimed Society must cover losses caused by the presence of the coronavirus at their restaurants and bars and related government closure orders, according to court documents. The businesses argued the policies didn't have a virus exclusion despite one being available in the insurance industry.

Judge Jacobius held in the orders that the lack of physical damage or loss was fatal to the businesses' claims for business income, extra expense, civil authority and contamination coverages.

The judge first turned his attention to a policyholder-favorable ruling in *In Re: Society Insurance Co. Business Interruption Protection Insurance Litigation*. In that February ruling, an Illinois federal judge allowed a group of restaurants, bars and theaters to pursue claims that Society was wrong to refuse coverage for their pandemic-related losses. That judge found a reasonable jury could interpret "direct physical loss of or damage to" as physical loss of use of property.

Judge Jacobius disagreed, finding no question of fact on the physical loss issue in the cases before him. It

didn't matter if the focus was on direct physical loss or direct physical damage, according to the judge, as there needed to be a physical manifestation as a result of an event triggering coverage under the policies.

The judge added it wasn't reasonable for Society to have to cover a microscopic particle when everyday cleaning products could easily remove the coronavirus from the restaurants and bars.

The business owners couldn't tap into the civil authority coverage, according to the judge, as the stay-at-home orders didn't bar access to their facilities. Judge Jacobius noted the businesses could still offer delivery and carry out, while employees could handle certain tasks like payroll on the premises.

For Society policies with contamination provisions, Judge Jacobius ruled that coverage isn't triggered unless the contamination barred access to the premises. The policyholders' allegations of the likely presence of the coronavirus at the restaurants and bars "is a strenuous causal relationship," according to the judge.

Judge Jacobius said he appreciated "the ease with which the particles travel," but said the stay-at-home orders "were designed as a primarily preventative measure" to slow or prevent the spread of the virus.

Amir R. Tahmassebi of Konicek & Dillon PC, counsel for Station Two and two other restaurants, told Law360 in a statement that his clients "respectfully disagree with the court's ruling" and would appeal.

Counsel for StefaniManagement didn't respond to requests for comment Friday.

The Station Two group of policyholders is represented by Konicek & Dillon PC.

The StefaniManagement group of policyholders is represented by Brown Udell Pomerantz & Delrahim Ltd.

Society is represented by Crowell & Moring LLP.

The cases are Station Two LLC et al. v. Society Insurance Inc., case number 2020-L-006410, and StefaniManagement Services Inc. et al., case number 2020-CH-04149, in the Circuit Court of Cook County, Illinois.

--Editing by Breda Lund.