

COVID-19 Pollution Coverage Update

December 1, 2023

COVID-19 Pollution Coverage – New York

Crescent Land Dev. Assoc. LLC v. Illinois Union Ins. Co.

--- N.Y.S.3d ---, No. 1034, 2023 WL 7765463 (N.Y. App. Div. Nov. 16, 2023)

Crescent Land Development Associates LLC (Crescent) owned a portfolio of commercial real estate. Crescent filed a lawsuit against its insurer, Illinois Union Insurance Company (Illinois Union), for remediation coverage related to the losses it incurred during the COVID-19 pandemic. Illinois Union declined coverage, arguing that COVID-19 did not trigger coverage as a “pollution condition” or “indoor environmental condition,” as those terms were defined by the Illinois Union policy.

The Appellate Division of the Supreme Court of the State of New York agreed with Illinois Union, reasoning that the policy’s definition of “pollution condition” does not encompass virus or virus material. Furthermore, although viruses in the policy were included in the term “indoor environmental condition,” an endorsement in the policy modified the definition of “indoor environmental condition” to include viruses that “are not the result of communicability through human-to-human or bodily fluid contact.” Because Crescent alleged that COVID-19 is a communicable virus, the appellate court held that damages and losses related to COVID-19 were excluded from coverage under the plain terms of the Illinois Union policy endorsement.

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