

The Supreme Court of South Carolina

Sullivan Management, LLC, Plaintiff,

v.

Fireman's Fund Insurance Company and Allianz
GLOBAL Risks US Insurance Company, Defendants.

Appellate Case No. 2021-001209

ORDER

Pursuant to Rule 244, SCACR, the Court will answer the following questions certified to this Court by order of Judge Mary Geiger Lewis, United States District Court Judge for the District of South Carolina:

1. Does the presence of COVID-19 in or near Sullivan's properties, and/or related governmental orders, which allegedly hinder or destroy the fitness, habitability or functionality of property, constitute "direct physical loss or damage" or does "direct physical loss or damage" require some permanent dispossession of the property or physical alteration to the property?
 - a. Do other policy terms, *e.g.*, those in the Communicable Disease Coverage Extension, evidence that COVID-19 can constitute "direct physical loss or damage"?
 - b. Is the phrase "direct physical loss or damage to property" ambiguous?
2. Do the Policy's Business Access and/or Civil Authority coverage require a complete prohibition of all access to Sullivan's properties?
3. Has there been a "communicable disease event" as that term is used in the Communicable Disease Coverage Extension?
4. Does Sullivan's alleged expenditures to mitigate COVID-19 qualify for Loss Avoidance or Mitigation Coverage?

5. Does the Mortality and Disease Exclusion bar all coverage or is it ambiguous and/or is it in conflict with the Communicable Disease Coverage Extension?

The parties shall proceed to serve and file briefs as provided by Rule 244(e), SCACR. Rule 244 does not provide for the filing of initial briefs; therefore, only final briefs should be filed in this matter.



FOR THE COURT C.J.

Columbia, South Carolina

November 10, 2021

cc:

Justin O'Toole Lucey, Esquire
Sohayla Roudsari Townes, Esquire
D. Lawrence Kristinik, III, Esquire
Allen Mattison Bogan, Esquire
Brett David Solberg, Esquire
Brett Ingerman, Esquire
The Honorable Mary Geiger Lewis