

Seafood Restaurants Are Sacrosanct In Louisiana

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On June 15, 2022, the Louisiana Fourth Circuit Court of Appeal, in the case *Cajun Conti LLC v. Certain Underwriters at Lloyd's London*, reversed a bench trial verdict against a French Quarter seafood restaurant in a business interruption insurance coverage row. The ruling illustrates how important the rules of contractual interpretation set forth in the Louisiana Civil Code are in evaluating Louisiana insurance coverage.

A. Background

Ocean Grill ("Oceana") purchased an "all risk" commercial insurance policy that covered Oceana's loss of business income sustained due to necessary "suspension" of operations during the "period of restoration." "Suspension" is defined in the policy as the "slowdown or cessation of your business activities."

Prior to the onset of the COVID-19 pandemic, Oceana employed 200 staff members and could accommodate up to 500 guests at a time. When the pandemic emerged the mayor of New Orleans prohibited non-emergency social gatherings and limited restaurant operations to take-out and delivery services. Oceana closed its dining rooms on March 16, 2020 and reopened them on May 16, 2020 at a significantly reduced capacity in keeping with updated guidelines.

Oceana sued its insurer in state court to secure a declaration that it had insurance coverage for losses related to the COVID-19 pandemic. In response, its insurer denied coverage and moved to dismiss the suit on the basis that contamination due to coronavirus did not constitute "direct physical loss or damage to" property. At trial, Oceana presented expert testimony of an "overwhelming probability" that there were people in the restaurant infected by COVID-19 at all relevant times. Following a bench trial, the court ruled against Oceana. Oceana appealed.

B. Discussion

The Fourth Circuit reversed the trial court. On appeal, Oceana argued that there were two reasonable interpretations of the insurance provision at issue.

1. Suspension of business operations due to "direct physical loss of or damage to the property" means the loss of the property's full use.

Viral particles inside the Oceana property prevented it from fully utilizing the insured property. This diminished its capacity, required constant decontamination and caused a slowdown in business.

2. Suspension of business operations due to "direct physical loss of or damage to property" requires the full loss of the property's use.

ATTORNEYS

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CAPABILITIES

Maritime

Oceana would have had to shut down their restaurant completely for some period to qualify for coverage.

The Fourth Circuit's analysis focused on the question of ambiguity and examined cases involving residential lead contamination, Chinese drywall, odor, carbon-monoxide contamination and asbestos to determine what constitutes "direct physical loss of or damage to property." The Court examined the policy, noted it did not contain a virus exclusion and agreed that there were two equally reasonable interpretations of what constitutes a "direct physical loss or damage to the insured property." The Court liberally construed the policy and determined it afforded coverage to Oceana.

C. Why Is This Important?

1. Louisiana's rules of contractual interpretation and their application to your business interruption policy can be outcome determinative.
2. A court may consider evidence beyond the words of an ambiguous contract to clarify the ambiguity or show the parties' intent.

W. Brett Mason is a Member at Stone Pigman Walther Wittmann L.L.C. and advises companies doing business in Louisiana in their desire to evaluate and manage maritime risk by counseling them on changes in law and aggressively protecting their interests should a dispute arise.

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