



MEMORANDUM ON RECENT PREVAILING DECISION ON PANDEMIC RELATED CLAIMS

The tide for recovering from pandemic-related losses may be turning. Recently, a Louisiana Appellate Court found coverage under a commercial property insurance policy for loss or damage, caused by the COVID-19 pandemic. Louisiana's 4th Circuit Court of Appeals reversed a trial court decision that dismissed a lawsuit filed by Cajun Conti, owner of the well-known French Quarter restaurant, Oceana Grill.

The insurance policy at issue here was a commercial property insurance policy which did not contain a virus exclusion. The Appellate Court's opinion held that "Upon review, we conclude that the insurance policy is ambiguous and capable of more than one reasonable interpretation in regards to the coverage of lost business income. Due to the existing ambiguity in the relevant policy language, the contract should be interpreted in favor of appellants." In so holding, the 4th Circuit Court of Appeals relied upon Louisiana precedent which found coverage when the insured property is "rendered unusable or uninhabitable". The Appellate Court explained as follows: "Widder held that physical damage was not necessary to trigger coverage in a homeowner policy because the insured property was 'rendered unusable or uninhabitable.' Widder, 11-0196, p. 4, 82 So. 3d at 296".

Thus, the Appellate Court ultimately determined that because the policy did not contain a virus exclusion, and there is precedent in Louisiana that physical damage was not necessary to trigger coverage, the policy here was ambiguous as to whether there was coverage for loss or damage to property caused by the pandemic. Moreover, the Appellate Court noted that the Insurer could have included a virus exclusion in the insurance policy at issue here, but did not do so.

While this is the first known case where a Court found coverage for business interruption/losses due to the pandemic, it is unclear how this appellate decision will affect other pending lawsuits or claims of a similar nature. Clearly, the Court relied on precedent in reaching its ultimate decision and holding, yet not all states have the same precedent as in Louisiana. However, given this Appellate Court's decision, it is possible that business owners with commercial property insurance policies, which do not contain virus exclusions, may have a chance to argue for coverage, and recover for losses or expenses incurred due to the pandemic.

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The GlobalPro Team continues to monitor the outcome of various claims and suits from the pandemic. We are encouraged to by this Court's decision and are hopeful that this is truly a changing of the tide.

We will keep everyone up to date on any new information. Should you have any questions, please feel free to reach out to us anytime at Recover@globalpro.com or (855) 487-7475.

Thank you,

A handwritten signature in black ink, consisting of several overlapping loops and lines, positioned below the 'Thank you,' text.

Daniel Odess
President | GlobalPro