

## CLIENT ALERT

### Insurer Prevails in First COVID-19 Business Interruption Trial

Feb.18.2021

On February 10, 2021, Judge Irons of the Civil District Court for the Parish of Orleans, Louisiana, issued the first judgment in a COVID-19 business interruption claim following a trial on the merits. Upon consideration of the entire record, including trial testimony and post-trial memoranda, Judge Irons ruled in favor of the insurer, Certain Underwriters at Lloyd's, London, denying the insurance claims brought by Cajun Conti, et.al, the owners and operations of Oceana Grill, a well-known New Orleans restaurant in the heart of the French Quarter. The suit was brought by a group of plaintiffs' attorneys including John Houghtaling, who has been a vocal advocate for COVID-19 business interruption claimants.

The petition sought a declaration that the plaintiff's "all risk" policy, which did not contain a virus or pandemic exclusion, provided coverage for direct physical loss and/or loss arising from a civil authority shutdown due to a global pandemic virus. The petition cited COVID-19 restrictions issued by the Governor of Louisiana and Mayor of New Orleans, and alleged that the coronavirus caused physical loss by "impacting public and private property and physical spaces in cities around the world," and that the virus "physically infects and stays on the surface of objects or materials" for up to 28 days. Plaintiffs contended that "contamination of the insured premises by the Coronavirus would be a direct physical loss needing remediation" through cleaning of the surfaces of the restaurant.

A bench trial was held in mid-December. The plaintiffs argued that: as evidenced by ISO's 2006 submissions to insurance departments in support of the use of virus exclusions, insurers allegedly knew that viruses could cause physical damage and loss; Lloyd's failure to include a virus exclusion in the restaurant's policy even though such exclusions were well known and available for use evidenced an intent to provide coverage; the insured property was physically damaged due to the presence of coronavirus on surfaces and in the air that required remediation; and loss of use of the property constituted insured "physical loss" under the terms of the policy.

Following post-trial submissions, the court entered judgment in favor of the insurer.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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