

## Reversing Trial Court, Louisiana Appellate Court Rules That Restaurant's Pandemic-Related Business Losses Are Covered By All Risk Policy (Insurance Law Alert)

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A Louisiana appellate court ruled a trial court erred in refusing to issue a declaratory judgment in favor of a restaurant seeking insurance coverage for its COVID-19-related losses. *Cajun Conti LLC v. Certain Underwriters at Lloyd's, London*, 2022 WL 2154863 (La. Ct. App. June 15, 2022).

As discussed in our [February 2021 Alert](#), the restaurant filed suit in March 2020, seeking coverage for business loss incurred after state and local orders restricted travel and dine-in eating in order to slow the spread of the virus. After a bench trial, the court issued a notice of judgment in the insurer's favor.

This month, the appellate court reversed, finding the policy ambiguous as to whether it provided coverage for the pandemic-related losses. In particular, the court held that "direct physical loss of or damage to property" could reasonably encompass a suspension of normal business operations, changes to capacity and operating protocols and constant decontamination efforts, among other things. In addition, the court deemed the "period of restoration" provision ambiguous, noting that the term "repair" could plausibly include the restaurant's cycle of cleaning and disinfection. In contrast, the overwhelming majority of courts across the country have concluded that a "period of restoration" provision indicates that actual, tangible destruction or alteration is necessary to trigger coverage.

In finding the policy ambiguous, the court emphasized several other factors, including that expert testimony indicated that there was an "overwhelming probability" that people present at the insured property were infected with the virus during the relevant time period and that the policy lacked a virus exclusion.

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