

Court rules insurance doesn't cover restaurant's COVID-related business losses

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An insurance policy covering losses caused by viruses carried by water or windstorms doesn't apply to a San Francisco restaurant's COVID shutdown, the state Supreme Court ruled Thursday.

The court had ruled unanimously in May that businesses forced to close their doors or cancel events because of the coronavirus could not recover their losses under standard policies that cover property damage, because they could not show any actual harm to their property. Thursday's ruling, also unanimous, went further and said even a policy that applied to some virus-related losses did not cover the COVID lockdowns.

The restaurant, John's Grill in downtown San Francisco, will suffer no apparent financial loss from the ruling because it settled its case with Sentinel Insurance Co. in 2022 for an undisclosed amount that the restaurant's lawyer described as "substantial." The owner, John Konstin, said 54 workers lost their jobs and the business lost \$20 million from 220 days of closure that began in March 2020.

But the court's decision will make it harder for other businesses to win their claims against insurers over policies whose terms are disputed.

Sentinel's policy for John's Grill covered losses caused by viruses that were spread by specific causes, such as windstorms, water damage, vandalism and explosions. The restaurant's owner acknowledged that none of those was the cause of its shutdown, but argued that those limits made the promise of coverage "illusory."

A state appeals court agreed, citing past rulings by other California courts that classified some unclearly worded insurance policies as "illusory coverage" and required insurers to meet their policyholders'

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expectations. But the state's high court cast doubt on those rulings Thursday and said they did not apply to the current case.

The restaurant's insurance policy clearly "provides virus-related coverage, but only if the virus results from certain specified causes of loss," Chief Justice Patricia Guerrero wrote in the 7-0 ruling. "The plain meaning of the policy governs."

And she said the court "has never recognized an illusory coverage doctrine." But "even if we were to consider this line of thinking, John's Grill would have to show it had a reasonable expectation of coverage for its pandemic-related losses," which it has failed to show, Guerrero said.

"Based on the policy language, John's Grill could not have an objectively reasonable expectation when it obtained the policy that it would provide coverage for all virus-related loss or damage," said the chief justice, who also wrote the 7-0 ruling in May denying property-damage coverage for business shutdowns.

"John's Grill cannot invoke the illusory coverage doctrine to transform the policy's limited virus-related coverage into unlimited virus-related coverage."

The ruling was disappointing but left the door open for challenges to ambiguous insurance policies in future cases, said Rani Gupta, lawyer for United Policyholders, a nonprofit that filed arguments in favor of coverage. Under a legal standard that the court did not question, Gupta said, "unclear insurance policy provisions are interpreted in favor of the insured."

The case is John's Grill v. Hartford Financial Services, S278481.