

Few California court wins for pandemic business-interruption claims

North Bay

As North Coast businesses grapple with insurance claims from the 2020 wildfires on top of ongoing issues with coverage for the coronavirus lockdowns of a number of economic activities, a major advocate for policyholders said those types of losses differ but they're connected by promises for coverage matching what's actually paid.

"Very often, businesses find lot of good things are said when they buy insurance on protection of their business or property, but at claim time there is a different dynamic that involves contracts with legal language that may not match the promises," said Amy Bach, executive director and one of the attorneys with United Policyholders, a San Francisco-based nonprofit, speaking during a recent wildfire recovery webinar hosted by Napa County Farm Bureau and the California Treasurer's Office. "We say they paid for protection, claim coverage and service. The devil and the dollars are in the details."

A connection between crop insurance claims for smoke damage and business interruption claims for not being able to operate because of government public health orders is the language of the policies. And language for both types of coverage continue to evolve.

After major blazes in the past several years, crop insurance policy language — and grape purchase contracts — have started to include testing metrics to prove smoke damage, but growers and vintners have been in a Catch-22 of sometimes not being able to get confirmation from overloaded laboratories before the fruit passes its prime on the vine. Similarly, since the SARS outbreak a decade and a half ago, business-interruption policies have started to include standard language excluding contagions.

United Policyholders told the Business Journal that it has pulled together a working group of roughly three dozen attorneys who are handling [significant business-interruption cases nationwide](#) around COVID-19, including chef Thomas Keller's case against insurer Hartford for The French Laundry restaurant in Napa

Valley. Called the COVID Loss Recovery Initiative, the group has made presentations to state insurance regulators and filed amicus briefs to help appeals of the strongest cases that are dismissed from lower courts.

The strength of the lawsuits comes down to whether there is an explicit virus exclusion in the policy, whether that language is reasonably clear, and if the loss has to be physical property damage versus monetary, Bach said. For the latter approach, epidemiologists are brought in to assess routes of transmission of the virus, and some legal theories such as unseen transmission are being drawn from successful environmental contamination cases in decades past.

But big recent wins for coronavirus-related business interruption claims haven't come in California, Bach noted. On top of similar [decisions in North Carolina](#) in the past few months, an Ohio federal district court on Jan. 19 [ruled](#) in favor of Henderson Road Restaurant Systems, which has over a dozen steak and seafood restaurants in five states, saying the Ohio governor's order to close dining rooms was the cause of the business loss and not the virus.

A case that the COVID Loss Recovery Initiative is closely following is an appeal by The Inns by the Sea, operator of five Central Coast boutique hotels, because it's the farthest along of the California cases, Bach said. Attorneys have filed to have the state Supreme Court take up the case directly.

"We don't want to get businesses hopes up," she said. "We know some of these claims are getting paid, but want to make sure every one of claims that should be paid is paid."