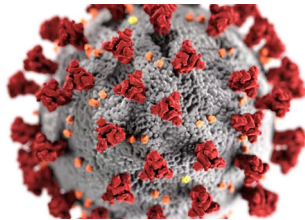


# Chubb And Lombardi's Set To Go To Still-Rare Trial Over Business Interruption Insurance Denial

October 28, 2020 | Kerri Panchuk, Bisnow (<https://www.bisnow.com/author/kerri-panchuk-381471>) (<mailto:kerri.panchuk@bisnow.com>)

A Dallas civil district court refused to dismiss a prominent restaurant operator's business interruption lawsuit (<https://www.bisnow.com/dallas-ft-worth/news/commercial-real-estate/restaurant-operator-lombardis-inc-sues-chubbs-over-denial-of-coronavirus-related-business-interruption-coverage-104051>) against major U.S. insurer Indemnity Insurance Company of North America, known as Chubb, this week.

The court's refusal to dismiss the case means restaurant operator Lombardi's will proceed to trial on claims that it rightfully triggered its business interruption insurance (<https://www.bisnow.com/tags/business-interruption-insurance>) coverage when the coronavirus forced the company to close all of its restaurants.



Lombardi's attorneys, Munsch Hardt's Michael Huddleston (<https://www.bisnow.com/tags/michael-huddleston>) and Nolan Knight, filed the lawsuit in April after Chubb (<https://www.bisnow.com/tags/chubb>) denied Lombardi's request for business interruption coverage.

Lombardi's claimed in its suit that the operator's insurance policy should cover financial losses stemming from pandemic-induced restaurant shutdowns since the policy says it will pay "for direct physical loss of or damage to covered property."

Lombardi's interprets (<https://www.bisnow.com/dallas-ft-worth/news/commercial-real-estate/restaurant-operator-lombardis-inc-sues-chubbs-over-denial-of-coronavirus-related-business-interruption-coverage-104051>) the words "loss of" to include not having use of the premises during a pandemic, whereas an adjuster with Chubb interpreted the contract as requiring physical damage to the property for business interruption coverage to kick in, according to the original lawsuit.

Lombardi's attorneys also argued the construct of the contract is ambiguous and that the exclusions in the policy do not necessarily apply to the coverage the restaurant is claiming.

Chubb's attorney, Daniel Lane Jr. with Norton Rose Fulbright (<https://www.bisnow.com/tags/norton-rose-fulbright>), relied on exclusions in the contract that eliminate coverage for losses caused by viruses or bacteria. Chubb petitioned for immediate dismissal of the case, arguing that a "direct physical loss" of the property is required to trigger coverage.

The court denied Chubb's motion to dismiss, which allows Lombardi's to move forward in its attempt to enforce business interruption coverage.

The fact that Dallas County's 14th District Court Judge Eric Moyer denied the insurer's motion to dismiss opens up a potential line of attack for similarly situated restaurants and retailers with similar language written into their business interruption insurance policies.

Insurance attorneys warned after the coronavirus broke out that business interruption insurance coverage would not necessarily kick in on virus claims. They also noted that every policy is written differently (<https://www.bisnow.com/dallas-ft-worth/news/commercial-real-estate/from-business-interruption-coverage-to-force-majeure-clauses-covid-19-is-becoming-a-legal-land-mine-for-tenants-and-landlords-103526>) and cases that land in litigation will turn on how attorneys, judges or juries interpret the contractual language and the applicability of the policy exclusions.

Though more than 1,000 lawsuits have been filed over insurance company's decision to deny coverage, few have made it to court (<https://www.bisnow.com/dallas-ft-worth/news/commercial-real-estate/a-few-words-in-a-contract-may-determine-the-fate-of-a-tenants-business-interruption-coverage-lawsuit-105803>). Goldberg Segalla partner Jared Greisman told *Bisnow* in early September that out of six or seven business interruption insurance court decisions to date, all but one had ruled in favor of insurance companies and allowed the case to be dismissed.

The 14th District Court's decision does not mean Lombardi's has won — the refusal to dismiss simply means the restaurant operator has cleared a major hurdle in getting its case to trial.

Lombardi's operates restaurant concepts such as Toulouse, Lounge 31, Lombardi's Catering, Taverna, Kai and Penne Pomodora.

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