

## New DJ Takes Different Tack on Business Interruption Coverage for COVID-19

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On Wednesday, March 25, 2020, Thomas Keller Restaurant Group filed a declaratory judgment action against Hartford Fire Insurance Company, in the Superior Court of California, seeking coverage for business income losses on account of COVID-19. Thomas Keller is a multi-award winning chef and restaurateur with seven Michelin stars to his credit.

In *French Laundry Partners, LP dba The French Laundry, et al. v. Hartford Fire Insurance Company, et al.*, Superior Court for the State of California, County of Napa, two Napa County restaurants – The French Laundry and Bouchon Bistro – allege that their operations were shut down by a March 18<sup>th</sup> order, of a Napa County health officer, which required all Napa County residents to stay at home unless they are performing certain essential activities or running certain essential businesses.

The restaurants allege that they are insured under an “all risks” policy issued by Hartford which provides coverage for lost business income and extra expenses incurred if access to the restaurants has been prohibited by an order of civil authority as a direct result of a covered loss in the immediate area. Plaintiffs claim that the policy provides coverage for any current or future civil authority closures in Napa County restaurants due to physical loss or damage from the coronavirus under the Civil Authority coverage part of the policy. The Plaintiffs claim that the March 18<sup>th</sup> order triggers coverage because the policy does not include an exclusion for viral pandemic and the “policy’s Property Choice Deluxe Form specifically extends coverage to direct physical loss or damage caused by virus.” No further background is provided regarding the terms of the policy.

It has been widely discussed that, in general, to implicate “Civil Authority” coverage, there must be physical damage to property other than the covered premises. But businesses have been closed principally to foster social distancing and not on account of the presence of the virus inside a premises.

The complaint seemingly attempts to meet the physical damage requirement by arguing that COVID-19 has physically impacted “public and private property, and physical spaces in cities around the world and in the United States.”

To support this allegation, the complaint asserts that the virus “physically infects and stays on surfaces of objects or materials, ‘fomites,’ for up to twenty-eight days” and notes that “China, Italy, France and Spain have implemented the cleaning and fumigating of areas” before allowing those areas to re-opened to the public. The complaint further asserts that the stay at home order states that it is being “issued based on evidence of physical damage to property.”

The restaurants are represented by attorney John Houghtaling, a veteran of the tobacco wars and Hurricane Katrina and Superstorm Sandy litigation. Houghtaling also represents Oceana Grill, a New Orleans restaurant that recently filed the first known COVID-19 business interruption coverage lawsuit. [*Cajun Conti, LLC, et al. v. Certain Underwriters at Lloyd’s London, et al.*, Civil District Court for the Parish of Orleans, Louisiana].

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As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

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