

**NEWS ALERT****INSURANCE RECOVERY GROUP*****Cajun Conti LLC v. Certain Underwriters at Lloyd's, London:*  
The First of the Coronavirus Insurance Recovery Actions**

By Benjamin H. Nissim and Marilyn B. Fagelson | March 23, 2020

The first insurance recovery action arising out of the novel Coronavirus was filed this past Monday in the Civil District Court for the Parish of Orleans, in New Orleans, LA. The case, styled *Cajun Conti LLC v. Certain Underwriters at Lloyd's, London*, seeks a declaratory judgment in favor of the Oceana Grill ("Oceana"), a well-known restaurant in New Orleans. The dispute arises out of the Governor of Louisiana's Civil Authority Order, Proclamation Number JBE 2020-27, banning gatherings of 250 or more people in a single space at the same time and the Mayor of New Orleans' restriction on all full-service restaurants limiting seating capacity by up to fifty percent.

Oceana's complaint seeks a number of declarations, including: (1) whether the Governor's civil authority order applies to restaurants with capacity in excess of 250 people; (2) whether the Governor's civil authority order and the Mayor's order triggers the civil authority provision of the Lloyd's policy; (3) that the Lloyd's policy does not contain an exclusion for a viral pandemic; (4) that the Lloyd's policy provides coverage to Oceana for any future civil authority shutdowns of restaurants in New Orleans due to physical loss from Coronavirus contamination; and (5) that the policy provides business income coverage in the event that the Coronavirus is found to have contaminated the premises.

As alleged in its complaint, Oceana is insured under a policy issued by Lloyd's providing property, business personal property, business income and ordinance or law coverage. The policy is written on an "all risks" basis and defines covered loss as a "direct physical loss" unless the loss is specifically excluded or limited in the policy. The policy does not contain any exclusion related to losses arising out of a virus or global pandemic though it does exclude losses due to biological materials in connection with terrorism or malicious use.

In support of coverage, Oceana alleges that the coronavirus "physically infects and stays on the surface of objects or materials" for up to twenty-eight days and that the Governor of Louisiana and Mayor of New Orleans have both issued civil authority orders in response to the virus that have and will continue to severely impact its business performance. Oceana's complaint expressly does not seek any determination as to whether the Coronavirus is actually physically in the insured premises, any amount of damages, or any other relief or remedy other than the requested declaratory relief. The complaint also makes clear that Oceana has not actually submitted a claim to its carrier and consequently, that the carrier has not denied the claim.

Oceana's declaratory judgment action raises a number of interesting procedural and substantive issues. As an initial matter, the suit implicates both jurisdictional and ripeness issues arising out of Oceana's decision to file before submitting a claim to its insurer. These will almost certainly be fully litigated before the parties and the court turn to the substance of the dispute. The posture of the action, however, speaks to the incredible volatility and risk currently influencing businesses throughout every sector of the economy.

Substantively, Oceana's complaint also highlights a number of insurance coverage issues that will likely need to be resolved in this matter and others. First, and importantly, Oceana's complaint raises the issue of whether contamination by the Coronavirus constitutes a "direct physical loss to property." This question may ultimately turn on issues requiring scientific evidence that could prove costly to policyholders and insurers alike. The issue may also resolve based on whether the contamination results in a loss of functionality of the property, without reference to substantial scientific evidence. Second, this dispute, and other similar matters, may turn on specific policy language that insurers may argue limits or precludes coverage, including the terms of the civil authority coverage provisions or any virus or pandemic related exclusions [See, [When The Coronavirus Strikes, Insurance May Help](#)]. Third, this case emphasizes how an insured must be aware of the type of coverage it has purchased and its reporting obligations with respect to any given claim. Given the ongoing, global nature of the pandemic and the "direct physical loss" requirement, policyholders must remain vigilant both when claims arise and at renewal time.

The issues identified above will likely turn on the specifics of individual state law. Indeed, differences between states are significant and will undoubtedly have an impact on a policyholder's ability to access their insurance. For instance, courts in California, New Jersey, and Colorado (amongst others) have construed loss of use and function as a property loss sufficient to trigger business interruption coverage. Courts in other jurisdictions, such as Massachusetts, Minnesota, and Utah have emphasized the requirement of an actual direct physical loss to property in order to trigger coverage.

All told, the Oceana case is just the first in what will likely be a long list of disputes arising out of the coronavirus. This case is certainly one that policyholders and insurers alike will be keeping an eye on as it progresses.

If you have questions about whether your current insurance policies provide coverage for losses arising out of the Coronavirus, do not hesitate to contact us.

*If you have any questions about the information contained in this bulletin, please contact:*

*Marilyn B. Fagelson at 203.772.7725 or [mfagelson@murthalaw.com](mailto:mfagelson@murthalaw.com)*

*Rachel Snow Kindseth at 203.772.7774 or [rkindseth@murthalaw.com](mailto:rkindseth@murthalaw.com)*

*Benjamin H. Nissim at 203.653.5419 or [bnissim@murthalaw.com](mailto:bnissim@murthalaw.com)*

**Marilyn B. Fagelson, Chair**  
203.772.7725  
[mfagelson@murthalaw.com](mailto:mfagelson@murthalaw.com)

**Terence J. Brunau**  
203.772.7785  
[tbrunau@murthalaw.com](mailto:tbrunau@murthalaw.com)

**George A. Dagon, Jr.**  
860.240.6039  
[gdagon@murthalaw.com](mailto:gdagon@murthalaw.com)

**Michael J. Donnelly**  
860.240.6058  
[mjdonnelly@murthalaw.com](mailto:mjdonnelly@murthalaw.com)

**David P. Friedman**  
203.653.5438  
[dfriedman@murthalaw.com](mailto:dfriedman@murthalaw.com)

**Rachel Snow Kindseth**  
203.772.7774  
[rkindseth@murthalaw.com](mailto:rkindseth@murthalaw.com)

**Benjamin H. Nissim**  
203.653.5419  
[bnissim@murthalaw.com](mailto:bnissim@murthalaw.com)

**James F. Radke**  
617.457.4130  
[jradke@murthalaw.com](mailto:jradke@murthalaw.com)

**Emily McDonough Souza**  
203.772.7711  
[esouza@murthalaw.com](mailto:esouza@murthalaw.com)

**Andrew G. Wailgum**  
617.457.4006  
[awailgum@murthalaw.com](mailto:awailgum@murthalaw.com)

**Kristen L. Zaehring**  
203.653.5406  
[kzaehring@murthalaw.com](mailto:kzaehring@murthalaw.com)

*With more than 100 attorneys in six offices throughout Connecticut, Massachusetts and New York, Murtha Cullina LLP offers a full range of legal services to meet the local, regional and national needs of our clients. Our practice encompasses litigation, regulatory and transactional representation of businesses, governmental units, non-profit organizations and individuals.*

**MURTHA  
CULLINA**  
ATTORNEYS AT LAW

CONNECTICUT + MASSACHUSETTS + NEW YORK

**MURTHALAW.COM**