

California Grill Gets Rare Settlement In COVID-19 Case

By **Elizabeth Daley**

Law360 (December 16, 2022, 6:50 PM EST) -- A 114-year-old San Francisco restaurant reached a settlement with an insurer in its state appellate case for COVID-19 pandemic business interruption coverage, making it one of the few businesses to obtain funds in such cases across the country, its lawyers said Friday.

Brian Danitz, an attorney for John's Grill, couldn't point to anything particularly unique about The Hartford Financial Services Group Inc. policy held by his client, but credited the judges in California's First Appellate Division with asking "very probing questions" during recent oral arguments, after which the case was soon settled.

John's Grill did have a virus exclusion written into its policy, but "there were other provisions that provided for remediation that included viruses," the restaurant's lawyer said.

"It's clear that the court of appeals scrutinized the policy language and they were very interested in hearing more regarding the meaning of the policy, and that led directly to this settlement," Danitz said, following a celebratory news conference at the steak and seafood restaurant he represented.

According to Danitz, the business closed for eight months during the pandemic and had to furlough 50 employees. The restaurant took its insurer to court after being denied coverage.

"They were shocked that they were turned down," Danitz said.

"Guess what, you are an insurance company, and at some point, you have to provide insurance."

Now, two and a half years later, business owner John Konstin plans to give his employees bonuses and donate some of the settlement to San Francisco's City College Culinary School.

In a statement, Konstin said he was pleased to be able to help support his city's culinary future with his donation, but the restaurant business remains challenging.

"COVID was and continues to be incredibly disruptive to the hospitality industry," Konstin said. "Closures were unprecedented and gravely impacted the livelihood of those working at restaurants."

Despite the significant impact of the pandemic, businesses across the country have had challenges obtaining insurance coverage.

In similar cases, state high courts across the country, including ones in South Carolina, Massachusetts, Iowa and Wisconsin, have sided with insurers.

Meanwhile, federal district courts around the country have permanently tossed about 51% of the 1,431 suits from policyholders against their insurance companies seeking pandemic loss-related coverage, according to Law360's **COVID-19 Insurance Case Tracker**. Another 20% of the pandemic insurance suits filed in federal courts have been voluntarily dismissed, the tracker shows, with about 26% yet to be fully decided.

"This is a hard-fought extraordinary result, and it's unfortunate that it has to be this way," Danitz said.

"I think the main thing about this case was that we had an engaged judiciary that was willing to

grapple with the complex language in the policy, and we didn't quit. It's a happy ending to the story, but it shouldn't be this hard to get coverage."

Due to certain confidentiality requirements of the settlement agreement, Danitz was unable to share the settlement amount, and representatives for the insurer declined to comment.

Danitz did, however, say that he celebrated at John's Grill Friday afternoon.

"I had a pinot noir," he said.

John's Grill Inc. is represented by Nanci Eiko Nishimura, Brian Danitz, Andrew F. Kirtley and Julia Qisi Peng of Cotchett Pitre & McCarthy LLP.

The Hartford Financial Services Group Inc. is represented by Anthony J. Anscombe of Steptoe & Johnson LLP and Tadhg Dooley and David R. Roth of Wiggin and Dana LLP.

The case is John's Grill Inc. et al. v. The Hartford Financial Services Group Inc., case number A162709, in the Court of Appeal of the State of California, First Appellate District.

--Editing by Nick Petruncio.