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CLAIM FOR COVID VIRUS COVERAGE BASED ON ILLUSORY PROMISE IS DENIED

Insurance; illusory coverage

John's Grill, Inc. v. Hartford Financial Services Group, Inc. (2024) 16 Cal.5th 1003 (Cal.Supreme)

Plaintiff operates a restaurant in San Francisco. After suffering substantial losses during the COVID-19 pandemic, it sought coverage under its property insurance policy issued by Sentinel Insurance, which denied coverage. One ground for denial was that the loss or damage claimed by John's Grill did not fall within the insurance policy's "Limited Fungi, Bacteria or Virus Coverage" endorsement. The Limited Fungi, Bacteria or Virus Coverage endorsement generally *excludes* coverage for any virus-related loss or damage that the policy would otherwise provide, but it *extends* coverage for virus-related loss or damage if the virus was the result of certain specified causes of loss, including windstorms, water damage, vandalism, and explosion.

Plaintiffs conceded that they could not meet this limitation but contended that the limitation was unenforceable because it rendered the policy's promise of virus-related coverage illusory. The Court of Appeal agreed, holding that the promise of coverage was illusory because Plaintiffs had no realistic prospect of benefitting from the virus-related coverage as written. It therefore invalidated the specified cause of loss limitation and allowed Plaintiffs' claims for virus-related losses or damage to proceed.

The Supreme Court reversed. It found that the terms of the Limited Fungi, Bacteria or Virus Coverage endorsement are clear and unambiguous, and since Plaintiffs cannot meet the terms for coverage, it has no claim under the policy. Plaintiffs could not avoid this conclusion by invoking the so-called illusory coverage doctrine. The Court has never recognized an illusory coverage doctrine as such. The doctrine as articulated by Plaintiffs does not appear in the Court's precedents. But even assuming some version of the doctrine may exist under California law, it concluded that an insured must make a foundational showing that it had a reasonable expectation that the policy would cover the insured's claimed loss or damage. Such a reasonable expectation of coverage is necessary under any assumed version of the doctrine.

Here, however, Plaintiffs have not shown they had a reasonable expectation of coverage under the policy for their pandemic-related losses. They therefore failed to establish that the policy created the illusion of coverage that rendered any contrary policy language unenforceable. Moreover, even setting aside this hurdle, and accepting Plaintiffs' articulation of the doctrine, they still cannot demonstrate that the policy's promised coverage was illusory. Even with the specified cause of loss limitation, the policy offered Plaintiffs a realistic prospect for some type of virus-related coverage. For example, it is conceivable that a virus at its premises might result from a windstorm or water damage that carried it there, or by an explosion or vandalism. In sum, under the circumstances here, Plaintiffs cannot invoke the illusory coverage doctrine to transform the policy's *limited* virus-related coverage into *unlimited* virus-related coverage.

Civil Discovery Act; scope of authority to impose sanctions

City of Los Angeles v. Pricewaterhouse Coopers, LLP (2024) __ Cal.5th __ (Cal. Supreme)

The City of Los Angeles filed a lawsuit against a private contractor. The contractor sought discovery relevant to the claims and defenses. After years of stonewalling, the City eventually turned over information revealing serious misconduct in the initiation and prosecution of the lawsuit. The trial court found that the City had been engaging in an egregious pattern of discovery abuse as part of a campaign to cover up this misconduct. The court ordered the City to pay $2.5 million in discovery sanctions.

The Court of Appeal held that the sanctions were not authorized by the Discovery Act, which it construed as conferring authority to sanction the misuse of certain discovery methods, such as depositions or interrogatories, but as conferring no general authority to sanction other kinds of discovery misconduct, including the pattern of discovery abuse at issue here. Reversed.

The Court of Appeal's view of the Discovery Act bucked the long-standing view of the authority conferred in the Act to impose sanctions for a pattern of discovery abuse. The trial court was not limited to imposing sanctions for each individual violation of the rules governing depositions or other methods of discovery.

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