

The California Supreme Court (and Court of Appeal) – July 15, 2022

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While not from the California Supreme Court, we are reporting on a decision from the California Court of Appeal because of its importance to myriad COVID-19 insurance coverage actions currently being litigated in California.

Wednesday, the California Court of Appeal, Second District, Division Seven issued the following decision:

Marina Pacific Hotel and Suites, LLC v. Fireman’s Fund Insurance Company, No. B316501:

In this case, hotel and restaurant owners (the insureds) sued Fireman’s Fund Insurance Company (insurer) alleging the COVID-19 virus was present on, and had physically transformed portions of the insured properties—“direct physical loss or damage” within the meaning of a first-party commercial property insurance policy—but insurer refused to pay policy benefits for covered losses incurred as a result. The trial court sustained insurer’s demurrer to the insureds’ first amended complaint with prejudice, ruling the COVID-19 virus cannot cause direct physical loss or damage to property for purposes of insurance coverage. Wednesday, the Court of Appeal held that while the trial court’s decision may ultimately prove to be the correct outcome following a trial or even a motion for summary judgment, it was error at the nascent pleading phase to sustain the demurrer. In reversing the trial court’s decision, the Court of Appeal recognized that for more than two years, our collective understanding of COVID-19, the infectious disease caused by the SARS-CoV-2 virus and its many variants, has evolved. The Court of Appeal noted that while we now think we know how COVID-19 spreads, how to protect against it, and how best to treat those who have it, what we now think we know—beliefs not yet appropriately subject to judicial notice—has never been a proper basis for concluding, as a matter of law, that alternative alleged facts cannot be true. The decision in *Marina Pacific Hotel and Suites* is available [here](#).

Related People

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