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Randy Maniloff 🔻

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Business-interruption policies clearly don't cover losses from lockdown restrictions.

By Randy Maniloff Sept. 29, 2021 6:39 pm ET

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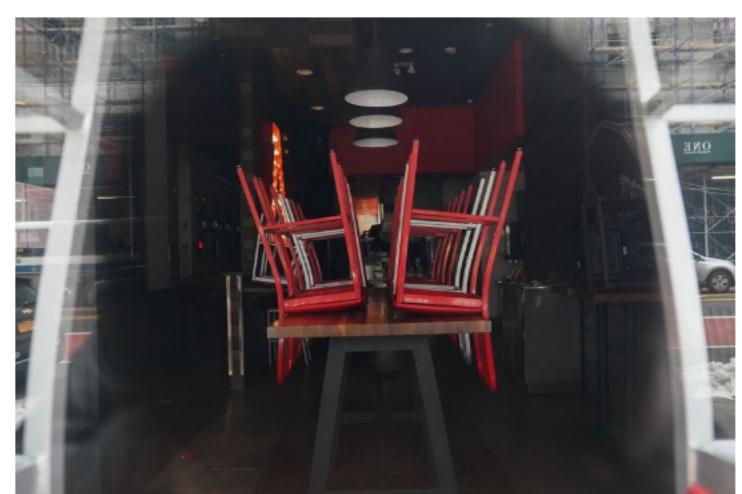
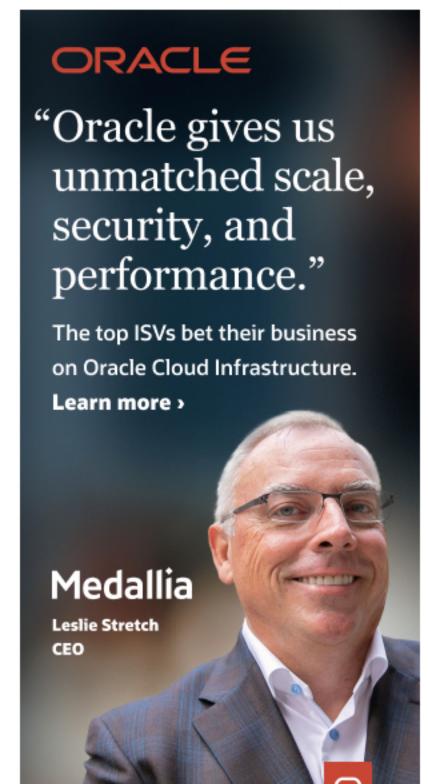


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The Sixth U.S. Circuit Court of Appeals recently ruled that

Chairs are stacked on a table at a closed restaurant in New York, Feb. 23.



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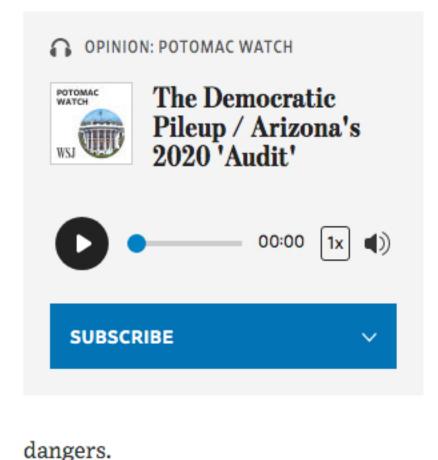
The tribunal concluded that while Santosuossos lost the ability to use its property as an in-person eatery, the governor's shutdown orders didn't physically alter the restaurant's structure. There was nothing to repair or rebuild that would have hindered the proprietors from opening their dining room. Therefore, this bedrock requirement for coverage wasn't satisfied.

Santosuossos, an Italian restaurant in Medina, Ohio, wasn't entitled to

payment for a claim on its business-interruption insurance after a

income when a business is shut down because of physical loss of or

state order prohibited in-person dining. Such policies cover lost



damage to its property.

v. Acuity Insurance Co., a unanimous three-judge panel acknowledged the challenges that pandemic restrictions imposed on restaurants and bars. But because of "a hard reality about insurance," the court's hands were tied. Insurance is a contract, not a general safety net for all

In Santos Italian Café LLC



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According to the

found in favor of the insurers for the same reason.

Two other federal appeals courts have weighed in on the issue. Both

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PREVIEW



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Law School's Covid Coverage Litigation Tracker, the pandemic has given rise to more than 2,000 lawsuits filed by businesses, large and small, seeking payment for business-interruption claims. Of 461 decisions by federal trial courts, 93% have been in favor of insurers. Businesses have fared better in state

University of Pennsylvania

courts, prevailing 28% of the time. But that means only that their suits weren't subject to immediate dismissal; they could lose at a later stage. The plight of businesses affected by the pandemic has not been lost on

many judges. When delivering the bad news, expressions of sympathy abound. In Kamakura LLC v. Greater New York Mutual Insurance Co., Judge F. Dennis Saylor IV observed that the pandemic is the kind of widespread disaster for which "insurance coverage ought to be routinely available." But the Bay State federal jurist ruled against the plaintiff because he couldn't "avoid the language of the policies." If the language is so clear, why have so many suits been filed? History

teaches that in the face of a widespread social problem, those looking for a solution will vie for insurance companies' capital, even if not deserving of an invitation.

And for good reason. Hocus-pocus interpretations of policy language have saddled insurers with massive obligations for which no coverage was intended. Injuries caused by exposure to asbestos, cleanup of toxic-waste sites and other widespread calamities have left insurance companies on the hook. Taking a page out of this playbook was no

doubt on the minds of lawyers here. But so far, plaintiff lawyers haven't pulled a rabbit out of a hat. Courts have understood what the panel in Santos Italian Café expressly stated: "Efforts to push coverage beyond its terms," if successful,

that insureds did pay for."

and, worse, runs the risk of leaving insufficient funds to pay for perils

create "an insurance product that covers something no one paid for

Mr. Maniloff is an attorney at White & Williams LLP in Philadelphia.

His clients include insurance companies.

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