RESTAURANT, RETAIL AND HOSPITALITY

NOVEMBER 25, 2024

Overcoming Insurance Policy Exclusions for Vineyards and Wineries: Case Review

By Tom Dupont & Maya Neski

As the fall harvest season closes, reflecting on the past year highlights the numerous challenges grape growers and wineries face. These include the increasingly prevalent threat of extreme weather conditions and temperature fluctuations, as well as wildfires. See, i.e., “Sonoma County fire threatens dozens of wineries in historic region,” San Francisco Chronicle, June 17, 2024; “Burgundy Faces Its Most Challenging Harvest in 50 Years,” Robb Report, September 29, 2024. As these unforeseeable risks and their devastating consequences increase at an alarming rate, grape growers and wineries must prepare for catastrophe – including by securing insurance coverage (from crop insurance, property insurance, business interruption insurance, and general liability coverage) that can respond in the event of a loss.

Sometimes, though, the expensive premiums a vineyard or winery pays do not guarantee that an insurance company will honor its contractual obligations. When disaster strikes and a policyholder presents a claim to their insurance company, the insurance company might improperly deny coverage. Policyholders should not immediately accept an insurance company’s denial; rather, they should have their broker or insurance coverage counsel examine the policy terms, facts and relevant case law to determine whether the insurance company’s coverage position lacks merit.

That very scenario played out in the case Kunde Enterprises, Inc. v. Nat'l Sur. Corp., 608 F. Supp. 3d 883 (N.D. Cal. 2022). There, the insurance company denied insurance coverage for wildfire smoke-damaged wines, forcing the policyholder to enforce the insurance company’s contractual obligations and its duty of good faith and fair dealing. In Kunde, the policyholder– a family operated winery and vineyard – submitted a claim under its property insurance policy for losses to smoke-damaged wines arising out of the 2017 Napa and Sonoma wildfires. Smoke from the wildfires infiltrated the Kunde family’s vineyard and winemaking facilities, causing extensive “smoke taint”, rendering the finished wine from two groups of Kunde’s wines unmarketable, except for salvage value. National Surety denied coverage for the damaged wines, in part, based on two exclusions: (i) a “spoilage exclusion”; and (ii) a “growing crops exclusion”. Kunde sued National Surety for breach of contract, declaratory relief, and breach of the implied covenant of good faith and fair dealing. Both Kunde and the National Surety moved for summary judgment in the case.

Insurance Coverage Considerations Before a Ransomware Attack

The National Surety insurance policy insured “all risk of direct physical loss or damage” to covered property, “except as excluded or limited elsewhere” in the policy. Kunde, 608 F. Supp. 3d at 895. Because the policy was an “all risk” policy, Kunde only had to show that the damage occurred as a result of a “direct physical loss” to its property. Id. Here, National Surety did not dispute that the wildfires directly caused the property damage. Id. Therefore, the burden shifted to National Surety to demonstrate that either exclusion unequivocally applied. As in most jurisdictions, under California law, insurance coverage is interpreted broadly to afford the greatest possible protection to the policyholder, whereas exclusionary clauses are interpreted narrowly against insurance companies in their capacity as the drafters of the policies. Kunde at 892.

The court first held that the “spoilage exclusion” – which excluded “loss, damage or expense caused by or resulting from… shrinkage, evaporation, leakage of contents, change in flavor or texture or finish, decay or other spoilage” – did not apply. Kunde at 896. National Surety argued that the wildfire smoke caused undesirable tastes and aromas in Kunde's wines, triggering the exclusion as to the smoke taint. Id. Kunde responded that the wildfire damage did not qualify as a “spoilage” loss, because the exclusion applied only to normal changes in the winemaking process. The court held that the “change in flavor” clause was ambiguous. The phrase reasonably could be interpreted to address normal variances in the winemaking process and spoilage that occurs with the passage of time; it did not “conspicuously apply to spoilage that occurs as a result of an extreme chance event such as a wildfire.” Id. The court also looked at other policy provisions in considering the spoilage exclusion’s scope. For example, the policy’s Perishable Stock form covers spoilage of stock from impurities caused by “foreign substances”, defined to mean “wine products not meant to be part of the wine recipe or blend”; therefore, a layperson would consider wildfire smoke to be a foreign substance for which coverage would apply. Kunde at 897. This supported Kunde’s position that “change of flavor” only applies to normal variances in winemaking. Id. Because the court could not say that the exclusion plainly and clearly excluded smoke taint damage from wildfires, it resolved the ambiguity in favor of coverage and granted Kunde’s motion for summary judgment on that issue. Id.

The court next considered National Surety’s denial based on the “growing crops exclusion”, which requires the insurance company to demonstrate that the damage occurred while the grapes were on the vine, rather than after harvest. National Surety submitted circumstantial evidence that the smoke taint occurred while the grapes were still on the vine, not during the wine production process. Id. at 898. Kunde, however, submitted various test results conducted on grape samples during and after harvest showing that the damage occurred after the grapes were harvested and while being processed at the winemaking facilities. Id. Therefore, the court found that an issue of material fact existed regarding whether smoke taint occurred on the vine or after harvest, rendering summary judgment inappropriate. Id. at 897-99. Following the court’s summary judgment decision, the parties settled the dispute.

As Grape Grower and Winery policyholders face more frequent and perhaps more financially devastating losses from volatile climate and fire exposures, insurance companies are more likely to look after their own interests and deny coverage with greater regularity. The lesson from Kunde is that policyholders should not take insurance coverage denials lying down; policyholders must aggressively defend their contractual rights under the insurance policies that they purchased to protect their businesses. Don’t let insurance coverage die on the vine.

Authors

Thomas Dupont is an attorney in Anderson Kill's New York office. Tom is a member of the firm’s Restaurant, Retail, and Hospitality Industry Group. tdupont@andersonkill.com

Maya Neski is an associate attorney pending admission in Anderson Kill's New York Office. She is a member of the firm’s Restaurant, Retail, and Hospitality Industry Group. mneski@andersonkill.com

ANDERSON KILL

Known as the Policyholder Powerhouse™, Anderson Kill is a pioneer in insurance coverage litigation: we have more experience in litigating, trying and settling insurance coverage disputes than any other law firm. As the only four-time winner of Business Insurance's Legal Team of the Year (including 2024), our firm has an extraordinary record of obtaining insurance coverage for policyholders in connection with all manner of insured losses. The firm has offices in New York, NY; Boston, MA; Denver, CO; Los Angeles, CA; Newark, NJ; Philadelphia, PA; Stamford, CT; and Washington, D.C.