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Business

Insurers knew the damage a viral pandemic could wreak on businesses. So they excluded coverage.

Some industry watchers predict 'a tidal wave of litigation' over whether policies should cover losses due to coronavirus closures

Sorry
WE'RE
CLOSED
VISA

A "Sorry, We're Closed" sign hangs in the window of a Detroit restaurant on March 31. (Anthony Lanzilote/Bloomberg News)

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By **Todd C. Frankel**

April 2, 2020 at 6:25 p.m. GMT+1

The forced closure of businesses nationwide because of the novel coronavirus would seem to be the perfect scenario for filing a "business interruption" insurance claim.

But most companies will probably find it difficult to get an insurance payout because of policy changes made after the 2002-2003 SARS outbreak, according to insurance experts and regulators.

SARS, which infected 8,000 people mostly in Asia and is now seen as foreshadowing the current pandemic, led to millions of dollars in business-interruption insurance claims. Among the claims was a $16 million payout to one hotel chain, Mandarin Oriental International.

As a result, many insurers added exclusions to standard commercial policies for losses caused by viruses or bacteria. Now, the added policy language will potentially allow insurance companies to avoid hundreds of billions of dollars in business-interruption claims because of the covid-19 pandemic.

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“Insurers realized they would not be able to cover such a broad-scale event,” said Robert Gordon, a senior vice president at the American Property Casualty Insurance Association.

[Businesses were already hurting under Trump’s trade war. Then came coronavirus.]

Other types of insurance policies may still have to pay out. Personal travel and event cancellation policies are expected to face huge claims from the coronavirus pandemic, according to industry reports. But few successful claims are expected to come from traditional business insurance lines because of the exclusion of virus-related damages.

The insurance industry said that its policies are tightly regulated by state authorities and that the exclusions were necessary given the overwhelming number of claims that can come from a single disease outbreak.

“This is a scale that only the federal government can bridge,” said David Sampson, president of the insurance trade group.

AD

A global pandemic presents unique problems for insurers because, Sampson said, “by its very definition, you can’t diversify the risk.”

But property and casualty insurance companies are facing growing pressure to tap the industry’s $822 billion in cash reserves.

Lawmakers in New Jersey, Massachusetts and Ohio are considering forcing retroactive policy changes to cover coronavirus business-interruption claims. Insurers said they object to this move because the additional cost of

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such claims were not included in policy premiums.

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Attorneys said they expect disputes over the precise wording of business insurance policies to generate court fights — similar to the battles with insurers after Hurricane Katrina in 2005, when homeowners and insurance companies fought over whether damages were caused by flooding or wind.

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Making the current insurance situation even more complicated are the many different kinds of business insurance policies, some with boilerplate language and others filled with personalized exclusions and endorsements.

"We're going to see a tidal wave of litigation over the business interruption," said Ross Angus Williams, an attorney with the Bell Nunnally & Martin firm in Dallas. "It's really a Wild West situation for a lot of businesses as to whether they'll have coverage."

About one-third of U.S. businesses have "business interruption" insurance, which is intended to cover losses from an event that forces companies to suspend or stop operations. Many policies also have "civil authority" clauses that cover losses when a governmental agency stops a business from operating. A common example would be a fire that damages a restaurant and leads the fire marshal to close it down.

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But most insurance policies require a physical loss to trigger coverage. A fire. A tornado.

"You can expect to hear, does contamination from a virus cause physical damage?" said Stephen Avila, professor of insurance at Ball State University.

That's the argument being made by Oceana Grill, a restaurant in New Orleans's French Quarter that, like every other restaurant in the city, has been ordered to stop offering sit-down service by an emergency declaration from the mayor.

Oceana Grill filed a lawsuit in a local court last month claiming the insurer should be required to pay a business-interruption claim because coronavirus had caused property damage by contaminating surfaces. An attorney for the restaurant did not respond to a request for comment.

[A record 3.3 million Americans filed for unemployment benefits as the coronavirus slams economy]

A Native American tribe in Oklahoma, the Chickasaw Nation, also has sued insurers claiming that its losses from shuttering its casinos should be covered by its business-interruption insurance.

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A well-known restaurant in California's Napa Valley, the French Laundry, also filed a lawsuit recently making similar claims.

State insurance commissioners are looking into the potential limitations of business insurance coverage for coronavirus-related claims — with differing viewpoints.

"We understand the desire to have coverage in this space," said North Dakota Insurance Commissioner Jon Godfread, "but many existing policies have specific exclusions to 'viral pandemics,' and business disruption coverage is generally triggered by actual physical damage. At this point, a pandemic is not considered physical damage."

"This is really a contract issue and will ultimately be settled in the courts," said Mississippi's insurance commissioner, Mike Chaney.

Christina Haas, a spokeswoman for Delaware's insurance office, recommended that business owners discuss their policies with insurers.

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Avila, the Ball State professor, said the insurance disputes caused by coronavirus shows the need for a government-supported solution, such as a national pandemic insurance program, similar to the National Flood Insurance Program.

Pandemic business insurance — complete with virus coverage — is offered by the broker Marsh.

Interest in its PathogenRx insurance product has exploded in recent weeks — “it’s exponential,” said Chad Wright, the company’s head of risk analytics and alternative risk transfer.

The company began thinking about the problem several years ago and modeled the risks of different diseases. It launched its outbreak insurance in 2018.

A few companies in the hospitality and gaming industries showed interest.

But not a single policy was sold.

With reporting from Michael Majchrowicz in Fort Lauderdale, Kate Harrison Belz in Chattanooga and Sheila Eldred in Minneapolis.

Coronavirus: What you need to read

Updated July 30, 2020

The Washington Post is providing some coronavirus coverage free, including:

The latest: Coronavirus in the U.S.

Coronavirus maps: Cases and deaths in the U.S. | Cases and deaths worldwide | Which states are reopening and closing again

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