BUSINESS

New Orleans Restaurant Kicks Off Coronavirus Insurance Coverage Litigation Action seeks to pierce through defenses that insurers say exist in many

policies to exclude claims tied to Covid-19



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By Leslie Scism

The legal action seeks to pierce through defenses that insurers say exist in many policies to exclude claims tied to Covid-19, although policies vary widely. Industry brokers and lawyers have anticipated an onslaught of insurance-

coverage legal disputes because so much money is at stake in the wake of civil

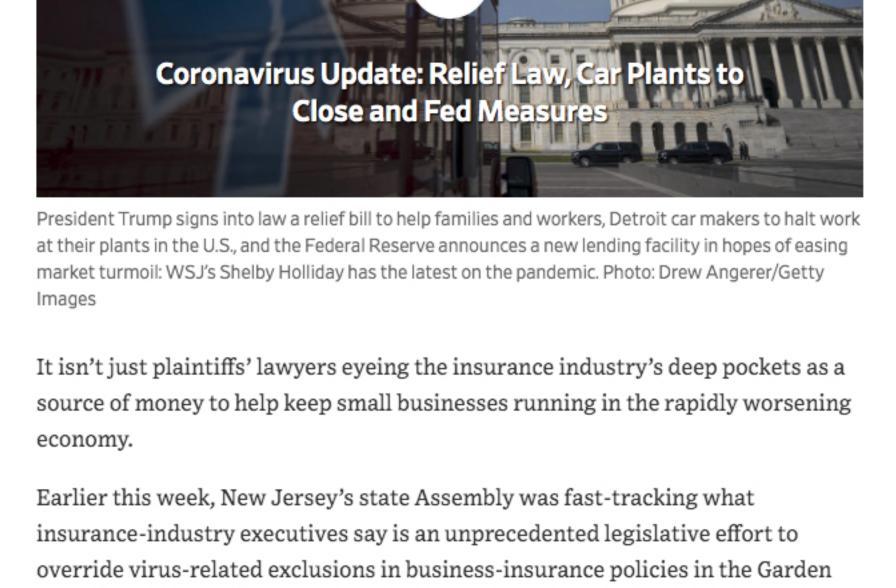
contact. Many of those actions are hitting restaurants and bars. More public officials are exploring ways to tap into insurers' coffers, as well.

authority orders and voluntary efforts to hold down infections by limiting social

Randy Maniloff, an insurance-coverage lawyer in Philadelphia at White & Williams LLP who represents insurers. "Nobody knows the role that insurance may play when this all shakes out. The only certainty is that insurance policies are going to be put under a microscope

for a CSI-like investigation," he said.

"When it comes to insurance for this crisis, nothing will be off the table," said



sponsored the bill. The funding source for helping the small-business policyholders could be the insurers themselves or other to-be-determined sources, he said.

Mr. Freiman said insurance companies need to "do something above and beyond

what is written into" the contracts. "I appreciate that they are trying to manage

their claims ratios but we need to think strategically: We have the business

State. They tabled the proposed bill only after industry trade groups agreed to

come up with an alternative, voluntary approach to help small-business

policyholders cover their losses, said Roy Freiman, the Assemblyman who

environment we are trying to save." The American Property Casualty Insurance Association disagrees. "Gutting private contracts after the fact through government fiat is not insurance," said the trade group's president, David Sampson. "This could have dramatic repercussions for families, individuals, motorists and businesses in New Jersey —and potentially beyond."

John Houghtaling II, Oceana's lawyer, said the restaurant's owners were too

The filing states that Oceana's policy doesn't include a virus exclusion. That

would differentiate the restaurant's situation from that of many other business

policyholders in the U.S. Mr. Houghtaling said in an interview the legal action

busy dealing with the restaurant to discuss the Louisiana court filing.

was filed at this early stage of the New Orleans civil authority orders announced March 13 to March 15—because "insurers are placing doubt on whether coverage applies to the shutdowns because they are denying that the virus impacts property." Business-interruption and coverage tied to civil-

Mr. Houghtaling said in the interview that "everyone is very concerned about the

A spokesman for Lloyd's said the insurance firm wouldn't comment because the

authority orders are aspects of property-insurance policies.

restaurant industry in New Orleans."

policyholders after superstorm Sandy.

matter is in court.

The insurance industry is on guard for many more efforts to tap into its financial resources. It has happened before. Regulators and courts have widened coverage in the past despite insurers' protestations of contractual exclusions, including after natural disasters. Following Hurricane Katrina in 2005, consumers challenged flood exclusions in standard homeowners policies and had some early court victories. Insurers ultimately prevailed in important cases on appeal but they already had shelled out billions of dollars, Mr. Maniloff said. Mr. Houghtaling was central to some of

the Katrina litigation against insurers, and also was involved in litigation by

economic situation playing out across the U.S. and the harm it is causing to all sorts of businesses, even as insurers point to contract language they say lets them off the hook for dispatching claims dollars. Companies typically buy business-interruption insurance policies to cover lost income following hurricanes, fire or events that cause physical damage to their

property. Many policies also have some other avenues for payouts for lost

business, including damage from civil-authority orders.

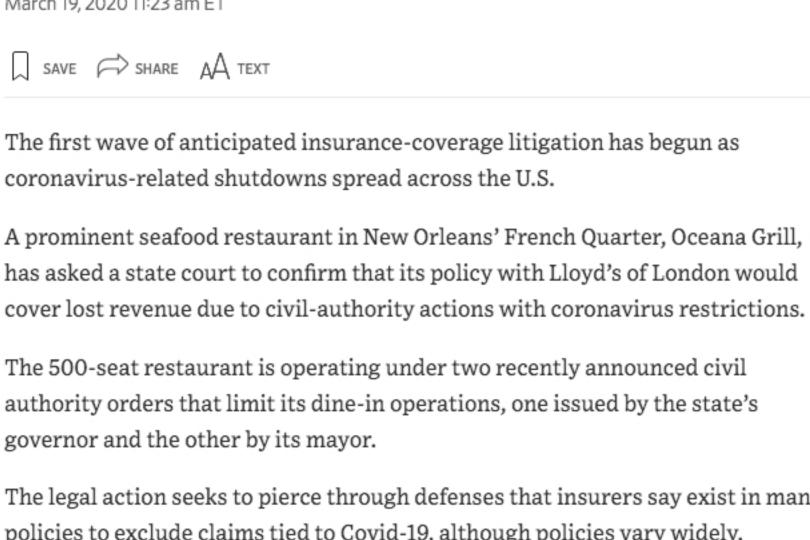
The Oceana Grill court filing and the New Jersey action point to the worsening

Insurers have shied away from insuring costs stemming from unknown viruses because they don't have the data to model potential outcomes. Many added language in standard policies just over a decade ago, following the SARS scare, to specifically exclude policyholders' revenue losses "due to virus or bacteria," according to brokers and lawyers.

If an insurer rejects a claim, policyholders can seek to identify ambiguities and nuances in policies to challenge in court. Legal experts say such ambiguities typically are construed in favor of policyholders.

Some industry lawyers expect to see more efforts by government officials to

"Lawmakers and regulators may take an 'all bets are off' approach where the terms, conditions and exclusions the insured paid for say one thing but there's pressure to get to a different result somehow," said William Lalor, an industry lawyer with Early Sullivan Wright Gizer & McRae. "That's no longer a contract, it's a tax, but public sentiment may well support it."



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