

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



Oceana Grill on Bourbon Street is operating under two recently announced civil authority orders that limit its dine-in operations.

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By [Leslie Scism](#)

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The first wave of anticipated insurance-coverage litigation has begun as coronavirus-related shutdowns spread across the U.S.

A prominent seafood restaurant in New Orleans' French Quarter, Oceana Grill, has asked a state court to confirm that its policy with Lloyd's of London would cover lost revenue due to civil-authority actions with coronavirus restrictions.

The 500-seat restaurant is operating under two recently announced civil authority orders that limit its dine-in operations, one issued by the state's governor and the other by its mayor.

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 authority orders and voluntary efforts to hold down infections by limiting social contact. Many of those actions are hitting restaurants and bars.

More public officials are exploring ways to tap into insurers' coffers, as well.

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



President Trump signs into law a relief bill to help families and workers, Detroit car makers to halt work at their plants in the U.S., and the Federal Reserve announces a new lending facility in hopes of easing market turmoil: WSJ's Shelby Holliday has the latest on the pandemic. Photo: Drew Angerer/Getty Images

It isn't just plaintiffs' lawyers eyeing the insurance industry's deep pockets as a source of money to help keep small businesses running in the rapidly worsening economy.

Earlier this week, New Jersey's state Assembly was fast-tracking what insurance-industry executives say is an unprecedented legislative effort to override virus-related exclusions in business-insurance policies in the Garden 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 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 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 busy dealing with the restaurant to discuss the Louisiana court filing.

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 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-authority orders are aspects of property-insurance policies.

Mr. Houghtaling said in the interview that "everyone is very concerned about the restaurant industry in New Orleans."

A spokesman for Lloyd's said the insurance firm wouldn't comment because the 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 policyholders after superstorm Sandy.

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

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 broaden coverage.

"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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