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## MARKETS

# The Legal Fight Between Insurers and Businesses Is Expanding

A lawsuit filed by a human-rights nonprofit against Chubb is the latest in a fight to get property insurers to pay coronavirus-related claims



The Simon Wiesenthal Center in Los Angeles has been closed to the public since March 19 under a stay-at-home order by the city's mayor. Rabbi Marvin Hier, pictured on Dec. 30, 2019, is founder of the center.

PHOTO: DAVID CRANE/ZUMA PRESS

By [Leslie Scism](#) and [Brody Mullins](#)

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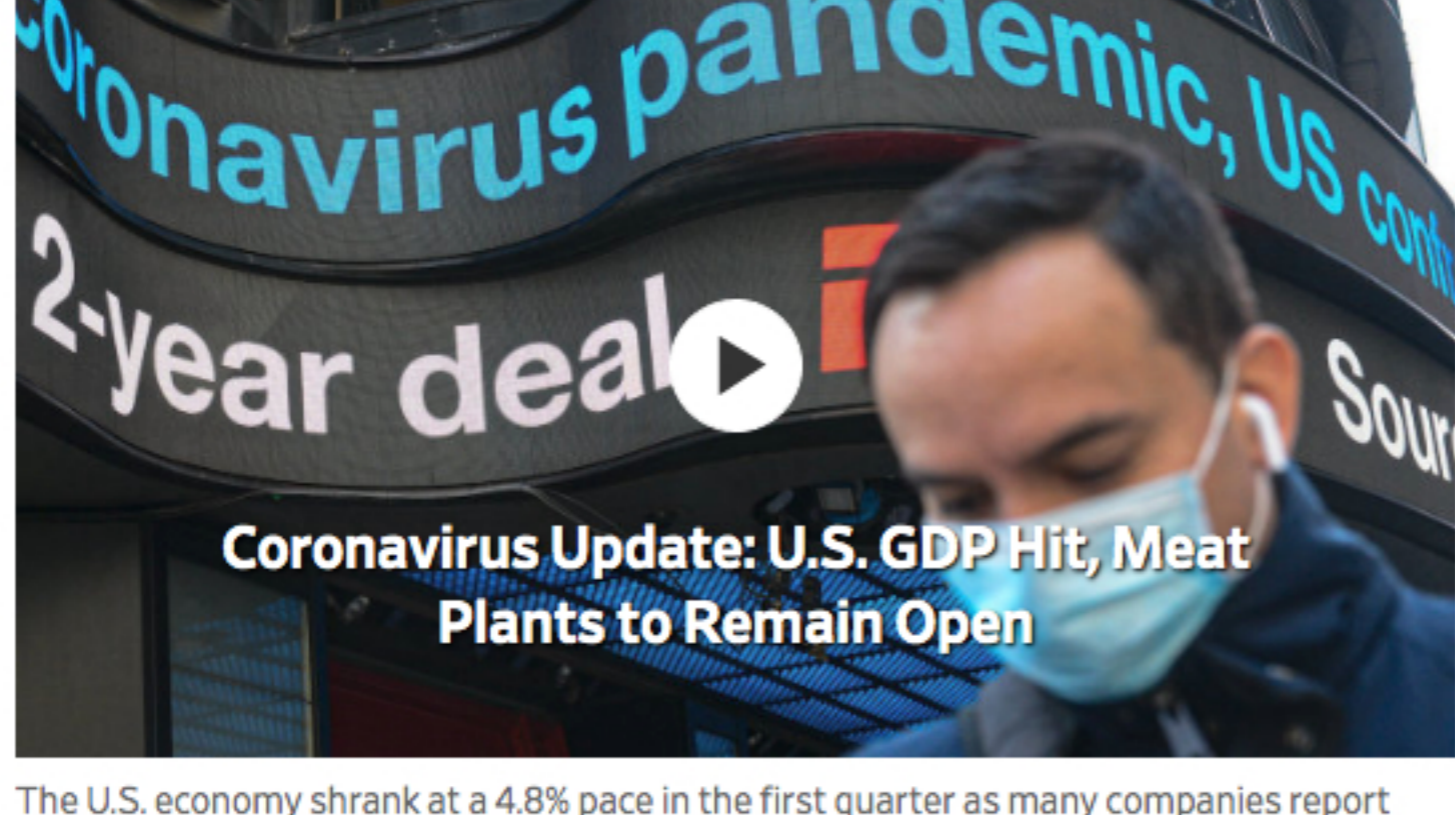
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A litigation campaign against the country's property insurers that began with celebrity chefs and their restaurants has now expanded into a host of other businesses. The latest plaintiff: a nonprofit focused on fighting anti-Semitism.

A trial lawyer leading a coalition of U.S. businesses fighting insurance companies on Wednesday filed a lawsuit in federal court in California to open a new front in the fight to get insurers to pay coronavirus-related claims. The plaintiff is the Simon Wiesenthal Center in Los Angeles, an educational and human-rights advocacy business that has been closed to the public since March 19 under a stay-at-home order by the city's mayor.

The center's case, and two others filed by lawyer John Houghtaling, could be instrumental in determining whether insurers will be on the hook for "business interruption" coronavirus claims totaling potentially hundreds of billions of dollars in claims. It is a major battlefield in what is quickly becoming a war between U.S. insurers and their policyholders.

In general, insurers maintain that coverage for government-ordered shutdowns applies only if the shutdown is based on actual physical damage of property. Mr. Houghtaling argues that property is damaged because the virus sticks on surfaces. Barring a specific exclusion for viruses, his clients qualify for payouts, he argues.



The U.S. economy shrank at a 4.8% pace in the first quarter as many companies report losses, President Trump's action to keep meat-processing plants open is criticized by unions, and labs say Covid-19 testing capacity is unused. WSJ's Shelby Holliday has the latest on the pandemic. Photo: Marcus Santos/Zuma Press

On a separate front, restaurants, retail stores, insurers and trial lawyers are [lobbying lawmakers in Congress](#) to support federal legislation to buttress their positions on the Covid-19 claims.

The stakes are high for the insurance industry and for the economy as a whole. Insurers loom as a seemingly deep-pocketed source of money for businesses employing millions nationwide and struggling to pay bills.

Collectively, the U.S. property-casualty insurance industry has about \$800 billion in surplus, the industry term for assets minus liabilities. But insurers have been united in saying that the vast majority of policies exclude virus-related claims.

They also say that the \$800 billion is needed to back up potential claims from property owners insured for the upcoming hurricane and wildfire seasons. [California wildfires in recent years](#) have broken records for their widespread damage.

"We are very disappointed," Rabbi Marvin Hier, founder and chief executive of the Simon Wiesenthal Center, said in an interview of learning that insurer [Chubb Ltd.](#) **CB -3.62% ▼** interprets the vast majority of its policies to exclude Covid-19 claims.

The center is out millions of dollars from a foregone annual fundraiser and other activities, yet "they want to get away with paying nothing."

A Chubb spokesman said it is company policy to not comment on client claims or pending legal matters.

[In an April 21 op-ed](#) in The Wall Street Journal, Chubb Chief Executive Evan Greenberg wrote that requiring business-interruption payouts on policies that weren't priced to include virus-related claims "would bankrupt the insurance industry to prop up other parts of the economy." Chubb is one of the world's largest business insurers, by industry market share and stock-market capitalization.

The following day, in the company's first-quarter earnings call, Mr. Greenberg added that "the trial bar will attempt to torture the language on standard industry forms and try to prove something exists that actually doesn't exist." He said Covid-19 would be a significant "earnings event" for the insurer, not something that would hurt its balance sheet.

Whether having a human-rights advocacy organization as plaintiff will make a difference is unclear.

"Many insurance disputes are decided by judges and not juries," said Randy Maniloff, an insurance-coverage lawyer in Philadelphia at White & Williams LLP, which represents insurers. "While sympathy could be a factor in a decision, it is a judge's job not to let it be."

Standard policies commonly sold to small and midsize businesses typically include in capital letters: "EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA," according to insurers, lawyers and regulators. The wording was introduced in 2006 following the SARS epidemic, industry lawyers and executives say.

Phrasing can vary in customized contracts for other clients, but insurers maintain the intent is similarly to exclude virus-related claims. Many plaintiffs' lawyers see openings to challenge the wording. The Simon Wiesenthal Center's policy doesn't contain a specific virus or pandemic exclusion, its filing says.

Insurers say they owe money in selected instances, and have begun reserving for it. On April 21, [Travelers Cos.](#) said estimated losses under some policies were included in first-quarter pretax charges against earnings totaling \$86 million.

The final decision on policy payouts could end up rendered by courts across the U.S. To that end, dozens of lawsuits have already been filed. Most plaintiffs are restaurants: pricey establishments, local favorites, taverns, sports bars, bakeries and pizzerias. Plaintiffs also include a scuba shop, wig store, dental practice, law firm and Native American tribes that own casinos.

Mr. Houghtaling, who was prominent in litigation against insurers after Hurricane Katrina in 2005 and superstorm Sandy in 2012, previously filed lawsuits with plaintiffs Oceana Grill in New Orleans' French Quarter and celebrity chef Thomas Keller's French Laundry in Napa Valley.

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His Covid-19 lawsuits are "declaratory judgment" actions. They seek court declarations that "civil authority" provisions in the policies can be tapped to cover losses suffered under government orders to slow the spread of Covid-19. Damage amounts would be the subject to subsequent claims with the insurers.

With the mounting litigation, "it could be the battle of epidemiologists" over the presence of Covid 19, including contamination on surfaces and how lasting it is, said Benedict Lenhart, a partner with law firm Covington & Burling.

He is advising large companies about claims. He said he believes some have credible legal arguments, though in most instances "this is not to say that it is a slam dunk on our side."

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