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Virus Exclusion? – Don't Abandon Hope for Coverage Just Yet

By David G. Jordan

Companies across all industries have been deeply impacted by the social-distancing protocols and economic slowdown caused by the COVID-19 pandemic. Naturally, competent business owners have looked to their commercial business and property insurance programs to determine what coverage, if any, they may have to offset the financial losses being suffered. To their dismay, many such entities have discovered that their policies specifically exclude losses related to virus. While this exclusionary language may seem to be the death blow to any chance of recouping losses from insurance, policyholders with virus exclusions should not give up hope for insurance recovery. First, some polices that broadly exclude losses from virus provide (or give back), by way of a coverage extensions, limited coverage for decontamination costs and/or communicable disease coverage. When in doubt as to whether any such coverage applies, businesses should provide notice of a claim. By doing so, some coverage might be obtained that otherwise would have been lost, but even where claims are denied, such businesses would be no worse off than if they had not tendered. Second, even where losses from virus are completely excluded, compensation may still ultimately become available.

History has shown that in times of crisis our federal and state governments have not turned a blind eye to the plight of hurting individuals of businesses; the very engine that drives our economy. Even now, certain states, such as New York, New Jersey, Massachusetts and Ohio, have proposed legislation aimed at forcing insurers to cover COVID-19 related losses, irrespective any policy exclusions that may bar such claims. Certainly, such initiatives will be met with strong objection by the insurance industry and will be the subject of legal challenge. However, while these legislative attempts to force insurers to cover otherwise uninsured risks face significant obstacles, the core idea of creating a means of establishing relief to particular (adversely impacted) groups of society is not without precedent.

In the wake of 9/11, for example, a fund was established to help cover injuries to those that responded to the collapse of the World Trade Center. Again, in Connecticut, legislation was passed to create a fund to help homeowners that were victims of crumbling foundations due to faulty concrete, as these losses were deemed excluded by insurance and the concrete suppliers went bankrupt (per the legislation, as small surcharge was added to homeowners' insurance premiums to fund the program). Funds have also been created in the aftermath of natural disasters, such as Hurricane Katrina. Alternative remedies may involve grants, such as what FEMA provides to storm damage victims that do not have flood insurance. A Pandemic Risk Insurance Act is also being discussed in Congress (albeit to address risks of future pandemics – not COVID-19). Therefore, it is very possible, if not probable, that some sort of program (or various programs) will be established to address the economic damage caused by Coronavirus to businesses that are without adequate (or any) insurance. Pragmatic legislators undoubtedly realize that keeping our economy healthy hinges upon keeping businesses afloat.

What such program looks like and how it will operate is difficult to predict at this point. But it very well could involve a setup where major insurance companies are asked to play a role in administering claims and determining payouts. Further, and importantly, a condition of qualifying for funding could very well be proof an insurance policy that excludes losses caused by virus (thus, do not tear up or throw away that policy in frustration!). For this reason, it is important for companies to not abandon the idea that financial remedies may become available in the not-to-distant future and to document, with as much detail possible, the losses suffered a result of this crisis. The greater the ability a company can quantify its losses, the more likely it is to receive maximum recovery from any potential fund that is created in the future.

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