

Appendix

Litigation

“The owners of a restaurant in France’s Beaujolais wine region have launched a legal action against the insurance giant Axa for refusing to cover losses they suffered during the government-enforced coronavirus lockdown”

Source: The Insurer (11 June 2020)

“A Paris court ruled that insurer Axa must pay a restaurant owner two months’ worth of coronavirus-related revenues losses, the [...] opening the door to a wave of similar litigation. Axa said it would appeal”

Source: Reuters

“Potential BI litigation enhances uncertainty for UK non-life carriers”

Source: Fitch (26 May 2020)

“Britain’s Financial Conduct Authority (FCA) aims to get business interruption insurance policies examined by a court as soon as July, a member of the policyholder action group said on Thursday”

Source: Reuters (8 May 2020)

“Pennsylvania state court was inundated with individual claims and proposed class-action lawsuits from four restaurants and a dental practice in the state seeking coverages from their insurance companies for losses caused by temporary closures required by the state to stop the spread of COVID-19”

Source: Law360 (9 June 2020)

“California Hotel Targets Farmers Insurers in COVID-19 Business-Interruption Lawsuit”

Source: AM Best (9 June 2020)

“A group of UK art organisations – including major contemporary art galleries, museums and sole traders – are preparing to file a class-action against Axa and Hiscox over rebutted business interruption claims in the wake of the Covid-19 pandemic.”

Source: The Insurer (8 June 2020)

“A Southern District of New York judge has denied a publishing company’s emergency application for a preliminary injunction against The Hartford subsidiary Sentinel Insurance over business interruption (BI) losses resulting from Covid-19.”

Source: The Insurer (18 May 2020)

Potential change of law in the US

“The Insurance Information Institute (III) has become the latest trade group to voice its concerns over the industry retroactively carrying the burden of the Covid-19 crisis with the organisation launching a new campaign designed to ensure the insurance industry maintains its integral role in supporting US economic growth and stability.”

Source: The Insurer (18 May 2020)

“State Proposed Legislation: The latest attempt to force insurance carriers to provide retroactive Business Interruption Coverage for COVID-19 related losses stalled on May 5, 2020, when the District of Columbia’s City Council opted to delay any vote on the proposal, after several members raised concerns about its legality and the cost such a proposal would have on insurers. Since the pandemic began, seven states have introduced similar laws that would provide Business Interruption Coverage to policyholders for coronavirus shutdowns, despite the lack of physical damage to property and specifically overriding any virus exclusion contained in the policy. New Jersey was the first to introduce a bill in mid-March and, since that time, Massachusetts, Michigan, Ohio, Louisiana, Pennsylvania, South Carolina and New York have followed suit. Thus far, none of the bills proposed have proceeded to a vote. Additionally, most of the bills proposed have a limitation on the size of the organization that could take advantage of any retroactive coverage; with most bills applying to businesses with 150 employees or less. Even if passed, however, these laws would most certainly face constitutional challenges from insurers and trade groups, arguing that they directly violate constitutional contracts’ clauses, which would take years in the court system to resolve.”

Source: The COVID-19 Risk Management Centre (8 May 2020)

“US Treasury opposes retroactive BI legislation

The US Treasury Department has penned a letter to lawmakers voicing its opposition to legislation that would force insurers to retroactively cover business interruption (BI) claims connected to the COVID-19 pandemic.

In the letter, Treasury Principal Deputy Assistant Secretary Frederick Vaughan criticised bills introduced by several states that aim to make insurers pay for disruption to business operations caused by the lockdown. “While insurers should pay valid claims, we share your concerns that these proposals fundamentally conflict with the contractual nature of insurance obligations and could introduce stability risks to the industry,” Vaughan stated.

Among the states to push for legal action over BI claims are Pennsylvania, New Jersey, New York, Ohio, Massachusetts, South Carolina, and Louisiana.

But there was been widespread opposition to legislation throughout the re/insurance industry, with many senior figures arguing that it could bankrupt companies and drive up premiums in other areas.

Vaughan added that the Treasury expects to work with Congress, the states, the National Association of Insurance Commissioners, and other stakeholders to determine how best to move forward in addressing losses attributable to both current and future pandemics.

Some market commentators have argued that a government reinsurance backstop will be necessary to provide adequate pandemic cover for businesses in future, via a model similar to the Terrorism Risk Insurance Act.”

Source: Matt Sheehan (12 May 2020)