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FINANCE

Insurance Firms Gain Early Lead in Coronavirus Legal Fight With Businesses

Courts have only just begun to work through more than 1,000 shutdown-related business-interruption coverage disputes



Barbershops are among businesses hard-hit by coronavirus shutdowns, but getting insurers to pay on business-interruption claims is tough. A California barbershop in July.

PHOTO: MIKE BLAKE/REUTERS

By [Leslie Scism](#)

Sept. 1, 2020 9:00 am ET



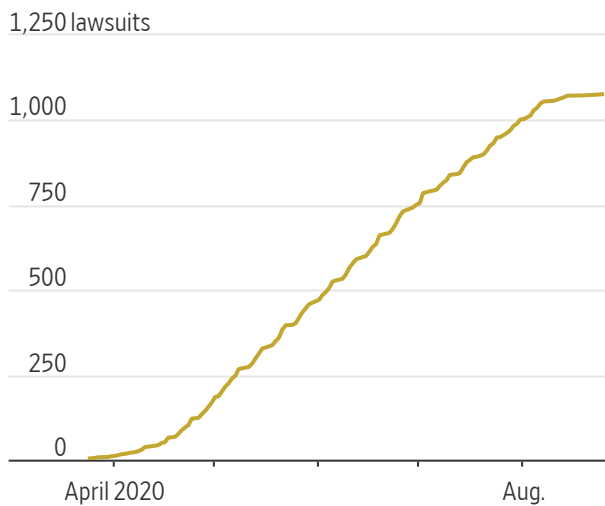
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U.S. property insurers have won a flurry of judicial rulings backing up their rejections of claims for businesses' lost income during government-ordered shutdowns, dimming policyholders' hopes of payments to help them rebound.

In recent weeks, insurers have won more rulings than policyholders as the courts begin to work through more than 1,000 Covid-19 business-interruption coverage disputes.

Still, policyholders scored success in a federal court in Missouri, boosting efforts to interpret property insurance as covering claims from the coronavirus.

Covid-19 coverage-dispute lawsuits filed in the U.S., cumulative



Note: About 5% of the lawsuits seek some type of coverage other than business-interruption, such as event-cancellation insurance.

Source: Covid Coverage Litigation Tracker at the University of Pennsylvania Carey Law School

Across the U.S., restaurants, hair salons, retailers and other businesses are seeking policy proceeds to deal with the huge economic cost of the shutdowns, in one of the biggest fights the insurance industry has ever waged with its policyholders.



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In the rulings, the judges sympathize with businesses' plight, but most so far support insurers' legal arguments.

Insurers say the policies are intended to help policyholders as they recover from events, such as fires, that lead to repairs and rebuilding, and were never intended to cover virus-related claims.

So far insurers have prevailed in state courts in California, Michigan and the District of Columbia, and in federal courts in Texas and California, according to a Covid-19 litigation-tracking effort at the University of Pennsylvania Carey Law School. On Thursday, a federal magistrate judge recommended the dismissal of a lawsuit brought by a Miami restaurant.

Those actions follow a May hearing where a Southern District of New York federal judge said she would rule against a magazine publisher seeking to force an insurer to pay a Covid-19 claim. The policyholder's lawyer withdrew the case before the judge issued a written opinion.

"We are at an important inflection point," said Randy Maniloff, an attorney at White & Williams LLP, who represents insurers. "If the score continues to be lopsided, the decisions will become a strong headwind for policyholders trying to convince judges to see the issues differently."

However, policyholders' lawyers say that many states have yet to rule, and appeals could undo some of insurers' early wins.



Customers dine outside in San Francisco in July. Nationwide, restaurants have been in the vanguard in suing insurers to pay business-interruption claims.

PHOTO: DAVID PAUL MORRIS/BLOOMBERG NEWS

“There are a few states that have favorable law on certain key issues, and many do not,” said Alexandra Roje, a partner with Lathrop GPM LLP, who represents policyholders. Until the states more favorable to policyholders deliver rulings, “we won’t know which way the wind is blowing,” she said.

Business-interruption coverage is a subset of property insurance, and with limited exception insurers say they didn’t collect premiums for virus-related claims. Pandemics, they say, violate a cardinal principle of insurance: Large numbers of policyholders pool their risk to finance a few losses in a given year, while policyholders suffer losses simultaneously during a pandemic.

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Do you think judges should broadly interpret insurers’ property policies, which might help businesses get coverage for Covid-19 losses? Join the conversation below.

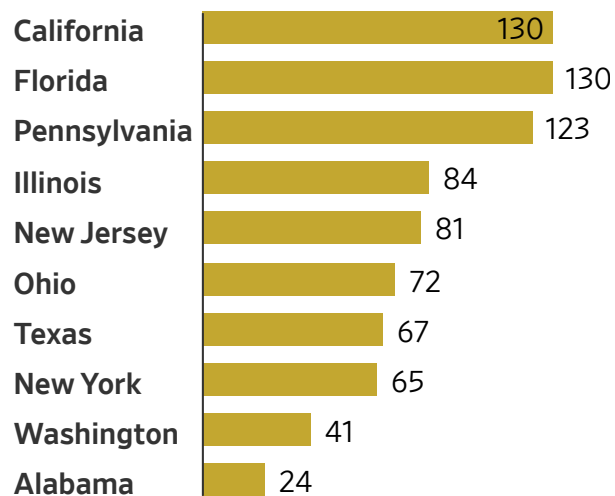
Many policies specifically exclude claims stemming from viruses. Among challenges for policyholders in policies without the specific exclusions, business-income coverage typically requires “direct physical loss or damage” to have caused the interruption. Over the years, many courts have interpreted this to mean tangible or structural damage to property.

To clear this hurdle, hotel company The Inns by the Sea asserts in its lawsuit in Monterey County, Calif., that the coronavirus is a “hazardous physical substance that permeates the air and sticks to surfaces, and causes both physical loss of and damage to property,” Michael Reiser, one of the hotelier’s lawyers, said in an interview.

The business is appealing the Aug. 6 ruling against it, he said.

In their lawsuits, plaintiffs are drawing on past rulings in which judges concluded that things like wildfire smoke, gasoline vapors and carbon monoxide created property damage.

Top 10 states by number of Covid-19 coverage-dispute lawsuits filed



Note: About 5% of the lawsuits seek some type of coverage other than business-interruption, such as event-cancellation insurance.

Source: Covid Coverage Litigation Tracker at the University of Pennsylvania Carey Law School

Still, in a typical example so far, U.S. District Judge David Ezra dismissed a case brought by San Antonio-area barbershops after concluding that a direct physical loss requires a “distinct, demonstrable, physical alteration of the property.”

The plaintiffs will appeal. “We believe that our clients have suffered physical loss,” said their lawyer, Shannon Loyd.

Insurers generally contend that any danger posed by the coronavirus can be wiped away with household cleaners.

In two cases in federal court in Missouri, a judge rejected insurer Cincinnati Financial Corp. [CINF 0.74% ▲](#)’s motion to dismiss the litigation.

Judge Stephen Bough said the plaintiffs—hair salons, bars and restaurants—“have plausibly alleged that Covid-19 particles attached to and damaged their property, which made their premises unsafe and unusable.”

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Now, as the case proceeds, the plaintiffs must document the nature and extent of Covid-19 on the relevant property to get their claims paid, the judge said.

“The initial decisions indicate, on the whole, these cases can ultimately be resolved consistent with insurers’ underwriting intent as reflected in the language of the policies,” said Bryce Friedman, a lawyer with Simpson Thacher & Bartlett, who represents insurers.

Plaintiffs beg to differ.

Mr. Reiser, the lawyer in the California case, is hoping for a quick response from the appellate court.

“Thousands of entrepreneurs and small-business owners are facing permanent closure or bankruptcy based on dubious coverage denials,” he said.

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