Novel Approach? Property and Liability Insurance Coverage Issues Presented by COVID- 19

By
Susan E. Mack

The author acknowledges her indebtedness to the skillful research efforts of Thomas White and Billy Wright of Adams and Reese LLP.

I. Introduction

This article will explore if there remains anything "novel" about policyholders' arguments for and insurers' arguments against property and liability insurance coverage connected to novel coronavirus (hereinafter "COVID-19") impacts. Keying in on the nature of the lawsuits that have been filed as of the publication date, our principal focus will be upon:

- Business Interruption claims presented by such diverse organizations as restaurants, auto dealers, medical centers, law firms, and beauty salons; and
- Casualty claims presented by businesses' customers because they contracted COVD-19 as an alleged result of the businesses' negligence.[1]

What is undisputedly "novel" is COVID-19's potential to plunge the global economy into a continuing recession, given the pandemic's effects on virtually all business sectors. COVID-19 may catastrophically impact the overall financial outlook for property/casualty insurers on a worldwide basis as well as the property/casualty industry's future ability to respond to claims of whatever sort. Citing the "growing uncertainty of business interruption coverage," UBS has now estimated a potential of $60 billion in global COVID-19-related claims.[2]

While Marsh McLennan has developed and marketed specific pandemic-caused business interruption cover in conjunction with reinsurer Munich Re and technology firm Metabiota, not a single company purchased this cover prior to COVID-19's onset. [3] The claims that many policyholders and insurers are now so heatedly disputing relate to more traditional policies purchased by U.S. businesses. Many of the U.S. business interruption claims relate to first party coverage under (i.) the ISO Commercial Property Causes of

[1] Besides business interruption and third party liability claims, potential claims may be presented to (i) event cancellation coverage; (ii)an employer's workers compensation policy for a staff members illness caused by workplace exposure, (iii) to builders' risk policies for additional property taxes, additional financing costs and other expenses occasioned by COVID-19 delays and (iv) an errors and omissions policy and a directors and officers policy for alleged mistakes made by management in not appropriately executing enterprise risk management to minimize the harmful effects of COVID-19.

[2] "UBS Predicts Up to $60 Billion in Global Insurance Losses" *Insurance (U.K.) Law 360* (April 27, 2020)

[3] The pandemic insurance product is named Pathogen RX. *See* "National News," *Insurance Journal* (April 3, 2020)

Loss-Special Form (the all risks form) (i.e. CP 10-30-10-12);(ii.) the ISO Commercial Property Form-Basic Form and Causes of Loss-Broad Form (the named perils form) (i.e. CP 00-10-10-12) and the (iii.) Business Owner Policy Form (i.e. BP 00-03-01-10). As to third party liability coverage, ISO Comprehensive General Liability Policy Form (i.e. CG 00 01 04 13) will most likely be impacted. In each instance, the presence or absence of ISO virus and other applicable exclusions will also be the cause of heated debate by policyholders and insurers.

Of course, many insurers issue proprietary commercial policy forms, which may differ from the ISO standard language. To the extent that these policies contain unique terms, the coverage arguments and ultimate dispute results may deviate from those for the ISO form policies.

While most *Journal of Reinsurance* readers are based in the United States, analogous coverage disputes are fast developing with respect to U.K. policies. Hence, U.K. trends will be cited where illustrative of common issues.

II. U.S. Business Interruption Coverage Issues

A. The Current Litigation Landscape

Based upon allegedly wrongful denial of business interruption claims, policyholder lawsuits are daily proliferating throughout the different states, including Florida, Louisiana, New York, New Jersey, Pennsylvania, California, Illinois and Oklahoma. Two of the earliest filed lawsuits--- *Cajun Conti LLC and Cajun Cuisine LLC dba Oceana Grill v. Certain Underwriters at Lloyd's, London* No. 20-02558 (La. Civ. Dist. Ct., Mar. 16, 2020) and *French Laundry Partners LP v. Hartford Ins. Co*. (Calif. Super. Ct.; March 25, 2020) --seek a declaration as to the scope of "all risks" insurance coverage. From the pleadings, it is clear in these and certain other "all risks" policy cases, there was no applicable virus exclusion. *See also Atma Beauty Inc. v. HDI Global Specialty SE* No. 1:20-cv-21745 (S.D. Fl., April 23, 2020).

In one interesting case development, following a policyholders' suit, an insurer has itself petitioned a court for declaratory judgment. The insurer states that no business interruption coverage is applicable to a law firm's claim due to the absence of covered property damage and the presence of an applicable exclusion. *See Travelers Cas. Ins. Co. of America v. Geragos & Geragos, P.C.* No. 2:20-cv-03619 (C.D. Calif., Apr. 20, 2020).[4]

Citing that the "availability of business interruption insurance in light of the novel coronavirus would be a key question requiring a uniform answer as the country deals with the economic fallout of the pandemic", two Philadelphia restaurants have promoted establishing new multi district litigation on this subject by approaching the U.S. Judicial Panel on Multi-District Litigation.[5] Putative class actions against insurers have also been

[4] "Travelers Sues Geragos Law Firm in Virus Coverage Dispute", *Insurance Law 360* (April 22, 2020)
[5] "Businesses Urge New MDL over Virus Interruption Coverage, *Insurance Law 360* (April 21, 2020)

filed, including six filed in U.S. District Courts from California to New York by a group of law firms on behalf of diverse business clients.[6] See, e.g., *Gio Pizzeria & Bar Hospitality LLC and Gio Pizzeria Boca v. Certain Underwriters at Lloyd's London* No. 1:20-cv-03107 (S. D. N.Y, Apr. 17, 2020) and *Bridal Expressions LLC v. Owners Insurance Co* No, 1:20-cv-00833 (N.D. Ohio, April 17, 2020).

B. Basic Principles

1. "All Risks" ISO Form Insuring Agreement and Direct Property Damage

The ISO Commercial Property Causes of Loss Form-Special Insuring Agreement states as follows:

A. *Covered Causes of Loss: When Special, is shown in the Declarations, Covered Causes of Loss means Risks Of Direct Physical Loss unless the loss is excluded or limited in this policy.*

Many proprietary policies contain the following grant of coverage:

Subject to the terms and conditions of this Policy, we will pay for all risks of direct physical loss or damage to a covered cause of loss to covered property at a covered location.

Judging from the lawsuits filed to date following business interruption claim denials under these policy coverage grants, one of the most pervasive policyholders' arguments promoting insurance indemnification for business interruption losses centers about the provision of "all risks" coverage. Policyholders reason that insurers' indemnification obligations naturally follow, because they have bargained and paid for expansive coverage carved out by only specific exclusions and limitations. Policyholders argue that they are therefore entitled to claim indemnification in instances in which the more narrow ISO Broad Form terms do not provide coverage. By contrast, insurers state that the "all risks" moniker is a misnomer and that the threshold requirements for policyholder indemnification indicate that the nature of the coverage is "open peril" or "special peril." [7]

Whatever the policies are called, COVID-19 related business interruption coverage disputes based on these policies' terms reveal a dynamic tension. Policyholders rely on the broad nature of coverage and, by contrast, insurers insist that no loss of business income coverage can be had without satisfying the threshold determination that income loss has been caused by direct physical damage to property.

The appeal of the policyholders' rationale is that, absent exclusion or limitation, expansive coverage is granted. The limitations of the policyholders' rationale are, that in the context of an airborne virus such as COVID-19, definitions of physical damage can likely not be met. Based on case law, insurers will reason that, absent a transformative

[6] Lawyers File Multiple Class Actions Seeking Virus Coverage" Business Insurance (April 20, 2020)

[7] https://www.irmi.com/term/insurance-definitioans/all-risks-coverage

physical change to the covered premises, indemnification obligations are not called into play. In short, where the COVID -19 virus can be eradicated from surfaces within the covered property by thorough cleaning and disinfecting, insurers will claim that the presence of the contaminant does not equate to the property damage that the policy terms contemplate.

An instructive case supporting the insurers' argument is *Universal Image Productions, Inc. v. Chubb Corp.*, 103 F. Supp. 2d. 705 (E.D. Mich. 2010). The insurer was granted summary judgment on the grounds that the "all risks" policy did not cover business interruption since no "direct physical loss" had occurred. In a parallel to COVID-19 related claims against "all risks" policies, the *Universal* court considered the policyholder's claims that strong odors and mold/bacteria were enough to constitute property damage. That rationale was rejected, as such intangibles that did not alter the structural integrity of commercial property leased by the insured. Hence, the contaminants did not constitute the threshold "direct physical loss." Policyholders may counter that, certain courts have equated loss of use to "direct physical loss or damage," see *Wakefern Food Corp. V. Liberty Mutual Fire Ins. Co.* 968 A.2d 720 (N.J. Sup. Ct. App. Div. 2009) (all risks policy; alleged damage to power grid causing power outage to be indemnified under consequential damage coverage rather than business interruption coverage). But there is scant published case authority equating loss of use with "direct physical loss or damage" in the commercial property policies' business interruption context.

2. "Extra Expense" Coverage and Direct Property Damage

Whether or not "all risks" or "named perils" coverage comes into play, other ISO policy forms underscore that direct physical damage to property is the necessary predicate to coverage. Moving to the ISO Business Income and Extra Expense Form, the Extra Expense covered by the insurer in the context of business interruption is described as follows:

Extra Expense means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss. We will pay Extra Expense (other than the expense to repair or replace property) to: (1) Avoid or minimize the "suspension" of business and to continue operations at the described premises or at replacement premises or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location.

More succinctly, coverage is provided for the business' inability to continue its normal operations and functions for the period of restoration so long as that suspension was caused by direct physical damage or loss to property.

Where an excluded peril; namely, defective design, was held to be the cause of the policyholders' damages rather than "direct physical loss or damage," the Extra Expense clause was found to preclude coverage. *National Union Fire Ins. Co. of Pittsburgh, Pa. v. Texpak Group, N.V.* 906 So. 2d (Fla. 3rd DCA 2005). Also, in a case involving a power outage rather than demonstrable structural damage, Extra Expense coverage was not

triggered. *Myers Kreines Gross Harris, P.C. v. Great Northern Ins. Co.,* 17 F. Supp. 3d 323 (S.D. N. Y. 2014).

3. "Civil Authority" Coverage

` The ISO Business Income and Extra Expense Form also provides for additional Civil Authority coverage for business income loss:

We will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises due to direct physical loss of or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss.

The coverage for Business Income will begin 72 hours after the time of that action and will apply for a period of up to three consecutive weeks after coverage begins.

Traditionally, this time-limited coverage grant relates to blocked access to a commercial building when other nearby properties are closed due to fire or other events that caused physical damage. Where, instead, businesses have been closed by state Executive Order relating to COVID-19, the following issues are raised by the above-cited language:

- What constitutes the "direct physical loss of or damage to property, other than the described premises?"
- Is access to the business specifically prohibited by the civil authority action?
- Is there a requisite causal connection between the property damage or loss and the prohibited access?

As mentioned above, there is considerable authority for insurers' contentions that no physical damage is caused by COVID-19 (first bullet). Also, case authority supports the absence of the requisite causal connection, because the state Executive Order contemplates only future contamination by COVID-19 (third bullet). Under similar Civil Authority wording, the Federal Court of Appeals for the Fifth Circuit held that business owner policyholders could not recover for business loss resulting from an evacuation order for anticipated Hurricane Gustav. *Dicki Brennan & Co. v. Lexington Insurance Co.,* 636 F. 34d 683 (5th Cir. 2011). The policyholders urged that the hurricane in the Caribbean caused the physical loss, but the court rejected that argument. The court held that the policyholder "failed to demonstrate a nexus between any prior property damage and the evacuation order."

In countering these arguments, it is likely that policyholder will rely on *Southlanes Bowl, Inc. v. Lumbermen's Mut. Ins. Co*. 208 N.W. 2d 569 (Mich. Ct. App. 1973). This *per curiam* decision held that business interruption coverage existed, where the policyholders' entertainment venues sustained business losses due to riot-related curfews in the wake of Dr. Martin Luther King's assassination. The court held that property damage was not a condition precedent to coverage. Due to the summary nature of the opinion, it is difficult

to determine whether the involved policy terms included the property damage proviso contained in the current ISO wording.

4. ISO Virus Exclusion

The ISO standard virus exclusion reads as follows:

We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.

Where this exclusion is present in either property or liability policies, policyholders are hard pressed to argue for coverage. The importance of the exclusion—and what happens in its absence--- are further discussed in **IV. U.S. Liability Coverage Issues.**

5. Associated Concepts in the United Kingdom

Given that U. K. policyholders have also filed lawsuits against their insurers, the Financial Conduct Authority (U.K. regulator) is seeking an authoritative declaratory judgment to determine whether business interruption coverage exists.[8] The regulator's staff intends to submit a variety of different policy wordings for the courts' consideration.

III. Business Interruption Coverage-State Legislatures Step In

A. Pending Legislation May Impose Coverage by Fiat for Smaller Policyholders – Developments in Louisiana, Massachusetts, New Jersey, New York, Ohio and Pennsylvania

Reinsurance intermediary Willis Re has expressed concerns that, if there is "retroactive cover," the U. S. property/casualty industry's existing $800 billion in reserves could be quickly depleted[9]. This reference to "retroactive cover" addresses certain state legislatures' efforts to pass statutes mandating that, for certain smaller policyholders, business interruption claims may not be denied on the basis of policy language.[10]

As of this article's publication date, the only enacted new state statutory revision regarding COVID-19 property and casualty insurance impacts is Minnesota's specification, for purposes of workers compensation coverage, that first responders are

---

[8] "FCA Heads to Court to Clarify Business Interruption Claims," *Insurance (U.K.) Law 360* (May 4, 2020)

[9] Retroactive Cover Poses Existential Threat, Reinsurer Warns," *Insurance (U.K.) Law 360* (April 24, 2020)

[10] New Bills Voiding Virus Exclusion (National Conference of State Legislatures) https.//www.ncsl.org/research/health/state-action-on-coronavirus- acovid19.aspx

presumed to have contracted COVID-19 in the course of their employment. [11] As shown below, proposed state laws to extend business interruption coverage (regardless of applicable policy wording) are pending only in the following states and, with just one current exception, apply only as to policyholders employing limited numbers of staff:

- Louisiana (H. B. 858 – companies of 100 employees or fewer) and (S. B. 477- no limit on number of employees in company)
- Massachusetts (S. B. 2888) (150 employees or fewer)
- New Jersey (A-3844) (applies to companies with 100 employees or fewer)
- New York (A. 10226) (250 employees or fewer)
- Ohio (H.B. 589) (100 employees or fewer)
  and
- Pennsylvania (H.B. 2372) (fewer than 100 employees).

All these bills make provision that, either on the date of the state's declaration of emergency or on the date of the prospective statute's enactment, a policy covering business income loss or business interruption loss shall be construed to encompass business interruption coverage occasioned by COVID-19. Both New York's and Massachusetts' proposed legislation also explicitly provide that any ostensibly applicable virus exclusion in the policy shall be considered null and void. Massachusetts S.B. 2888 goes furthest in re-writing any existing policy by stating that no insurer in the state may deny a claim either because (i.) the relevant policy excludes losses resulting from the applicable policy's virus exclusion or (ii.) because of the insurer's contention that there has been no physical damage to the policyholder's property.

So, given these state developments, what's an aggrieved insurer to do? If an insurer lobbies the state legislatures to assure these far-reaching prospective statutes are not enacted into law, one possible means of challenge is the Contracts Clause of the U.S. Constitution to the effect that "no state shall pass any law impairing the obligation of contracts"[12]. Hence, if a policyholder and insurer have entered into an insurance policy, that contract cannot be varied after its effective date by the state legislature. If confronted by this argument, policyholders will likely argue that the state legislature's power to enact these statutes falls within the Constitution's reservation of police power to the states. Policyholders would also argue, that once enacted, "liberalization" clauses in the policies themselves will conform the terms of the policies to these coverage-expanding statutes. Such clauses typically provide that if the policy terms are in conflict with the statutes of the state in which the policy was issued, then the policy terms are amended to conform to the applicable statute.

IV. U.S. Liability Coverage Issues

A. The Current Litigation Landscape

[11] HF 4537, inserting presumption in Minnesota Statutes Section 176.011 (subdivision 15). Subpart (f) (3) provides that the employer can only rebut the presumption by showing that the first responder's employment was not a direct cause of the disease.

[12] U.S. Constitution, Art. 1., Section10.

Policyholders have and will continue to seek liability coverage, based on lawsuits in which claimants allegedly suffer from COVID-19 due to the policyholders' negligent actions or omissions. The potential exists for any business to be sued by individuals alleging that they contracted COVID-19 as a result of that business' negligence. So far, the most publicized legal actions have been filed against cruise lines.[13]

Now pending in the U.S. District Courts in California are lawsuits filed by Princess Cruise Lines passengers, *see e.g. Chao v. Princess Cruise Lines Ltd.* No. 2:20 -cv-3314 (C.D. Calif. April 9, 2020). At least one class action has been filed alleging gross negligence that caused physical injury and emotional distress. *Archer v. Carnival Corporation and Princess Cruise Lines Ltd.* No. 3:20 -cv-02381(N.D. Calif. April 8, 2020). The putative class consists of individuals on the Grand Princess' February 21st-March 2nd roundtrip to Hawaii, taking place after the ship made an ill-fated voyage to Mexico. One individual from the Mexico trip disembarked in San Francisco while allegedly infected with the COVID-19 virus and later died. Grand Princess cruise passengers from the Mexico cruise stayed on for the Hawaii cruise. The ship was quarantined when it returned to California after the Hawaii voyage. Ultimately, five people from the Hawaii trip died and 131 tested positive for COVID-19.[14]

B. The Comprehensive General Liability Coverage Grant and Relevant Exclusions

With respect to businesses--other than cruise lines--that may soon be sued in connection with their customers' or other individuals' infection by COID-19, the Comprehensive General Liability ("CGL") Insuring Agreement provides, in relevant part:

We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result.

. . . .

This insurance applies to "bodily injury" and "property damage" only if: (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory."

Insurers may be motivated to deny policyholders claims on the basis that a claimant's infection by the COVID-19 virus was not caused by an occurrence (later defined in the policy as an "accident"). Policyholders will quickly remind insurers that

[13] Among these is a class action, filed pursuant to the Jones Act, alleging that crew members of the Celebrity *Apex* sustained injury due to Celebrity Cruises' negligence. *Nedeltcheva v. Celebrity Cruises, Inc.* No. 1:20 (S.D. Fla. 2020)

[14] "Cruises Set Sail Knowing the Risk" *Wall Street Journal* (May 2-3, 2020). The insurance policies issued to the cruise lines is unknown, but presumable provide commercial marine coverage which will not be further analyzed here.

such arguments were unavailing with respect to the many bodily injury claims arising from the asbestos crisis. Even though the inhalation of airborne fibers could be seen to have arisen from an "occurrence" in the traditional sense, the fact that asbestosis and mesothelioma could also be categorized as occupational diseases did not impact the fact of coverage under occurrence-based policies. See, e.g., *Commercial Union Ins. Co. v. Porter Hayden Co*. 698 A. 2d 167 (Md. Ct. Spec. App. 1997).

If present, insurers will rely on the plain language of the ISO virus exclusion. In the event that the relevant CGL policy contains only a pollution exclusion, analogous existing case law supports that coverage for COVID-19 related bodily injury may be excluded by virtue of such exclusion. In *First Specialty v. GRS Management Associates, Inc.* 2009 WL 2524613 (S.D. Fla. 2009), an individual contracted the Coxsackie virus after entering a swimming pool maintained by the defendant. The court held the pollution exclusion precluded coverage, on the basis that the virus was a contaminant like others barred by the pollution exclusion. There is contrary law in other jurisdictions. *See Paternostro v. Choice Hotel International Services Corp*.309 F.R.D.397 (E.D. La. 2015) (concluding bacterium was not excluded by a pollution clause). Given the diversity of judicial opinion on this subject, the issue of whether a pollution exclusion serves to exclude COVID-19 related bodily injury will depend on the court examining the issue.

V. Federal Backstop to be Implemented?

A. U. S. Progress to Date

Chubb Chief Executive Officer Evan Greenburg has suggested the following solution to pandemic coverage-related battles between insurers and policyholders:

> *...potential way to handle pandemic risks in the future would be to create a public-private partnership, where insurers could start covering that risk for a proper price and government could take on the tail risk exposure.*[15]

However, as of this writing, no federal government-backed pandemic backstop bill has yet been introduced in Congress. Certain preliminary proposals have been floated.

California Representative Maxine Waters has distributed a memorandum alluding to a Pandemic Risk Act of 2020, which would provide for federal government payments to insurers once they have excess of a stated $250 million threshold.[16] Butler University's risk manager has proposed an amendment to the existing Terrorism Risk Insurance Act which would provide a backstop and risk pool for losses related to pandemics and

---

[15] "Chubb CEO Greenburg Warns Retroactive Measures Would Bankrupt Insurance Industry," *Insurance Journal* (April 16, 2020)

[16] "Proposed Backstop Would Cover Pandemic Business Interruption", *Business Insurance* (April 9, 2020)

associated perils of quarantine, government-ordered repatriation and border closings.[17] This draft specifies that the amendment would be backdated to encompass payments related to the current COVID-19 pandemic.

B. Analogous Progress in the United Kingdom

Dating from the early 1990's, Pool Re, a U.K. government-backed reinsurer, was established to act as a backstop to terrorism. The U.K. trade association for the leisure and entertainment industries has now stated that the government should release the equivalent of $8.1 billion in funds from Pool Re to compensate business hard-hit by COVID-19. This move follows the expressed sentiment of certain senior executives who wish to form a pandemic reinsurer.[18] As in the United States, it is difficult to predict how and when these early efforts will unfold.

VI. Reinsurance Implications?

Reinsurers have now introduced reinsurance treaty exclusions for COVID-19 in the London market at April 2020 renewals.[19] But for treaties and facultative certificates without any such exclusion, what are the prospects for coverage disagreements between reinsurer and ceding company?

Absent enactment of the pending state legislation expanding COVID-19 coverage, we can safely predict that the real COVID-19 coverage fight will be between policyholders and insurers, rather than those insurers and their reinsurers. If a follow-the-settlement provision is included in the reinsurance contract, the following holds true with respect to COVID-19 verdicts or settlements:

> The follow-the-fortunes [or follow-the-settlements] principle does not change the reinsurance contract, it simply requires payment where the cedent's good-faith payments is at least arguably within the scope or the insurance coverage that was reinsured.
> *Aetna Cas. and Sur. Co. v. Home Ins. Co*., 882 F. Supp. 1328 (S.D. N. Y.1995) citing *Mentor Ins. Co. (U.K.) Ltd. vs. Brankasse* 996 F.2d 506 (2nd Cir. 1993).

In the event of states' enactment of statutes providing COVID-19 coverage without regard to policy wording, the prospect for alignment between reinsurer and cedent is less clear. Reinsurers have successfully challenged coverage in instances in which cedents have been seen to themselves expand reinsured policy coverage. *see, e.g. State Auto Mut. Ins. Co. v. American Re- Ins. Co.* 748 F. Supp. 550 (S.D. Ohio 1990) (finding that a reinsurer cannot be held liable beyond the terms of the contract merely because the primary insurer has agreed to expand the underlying primary agreement). Where state legislatures move to expand underlying coverage, and the resulting laws survive constitutional challenge, it is less likely that a reinsurer may avoid liability. Should the statutes be passed, each

---

[17] https://www. riskandinsurance.com/covid-19-business-interruption-relief-legislation-drafted-by-butler-university-risk-manager

[18] "Leisure Businesses Eye 6.6 Pound Fund for Pandemic Claims," *Insurance (U.K.) 360* (May 1,2020)

[19] "Retroactive Cover Poses Existential Threat, Reinsurer Warns," *Insurance (U.K.) 360* (April 24, 2020)

applicable reinsurance contract will have to be scrutinized to determine whether the specific terms clarify the reinsurer's obligations in the face of coverage broadened by law.

VII. Conclusion: How Novel Are the Thrusts For and Against Coverage?

Necessarily, policyholders and insurers will rely on established case law precedents to establish or reject insurance coverage for COVID-19 property and casualty claims. Litigants will address the traditional insurance coverage issues of "physical loss and damage" and causation in the factual context of the COVID-19 virus contaminant. The most "novel"[20] aspect of the COVID-19 coverage analysis will be, instead, the application of peculiar facts to the law where judges are keenly aware of the extraordinary and pervasive harm suffered by policyholders and claimants. Forum selection—and determining the likely judicial sympathies--will therefore constitute a key aspect of each COVI-19-related coverage fight.

[20] The pervasive harm worked by COVID-19 is "novel," but not entirely unprecedented, given the asbestos crisis.