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COVID–19: What Will Insurance Cover?

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Las Vegas bookmakers haven't yet started taking bets on whether severe acute respiratory syndrome (SARS) will reappear in the human population. But it's probably only a matter of time.[1]

Introduction

Insurance is designed to mitigate risk, on the assumption that only a limited number of insureds will suffer an insurable loss during a given period. But how can insurers deal with catastrophic events that affect virtually all insureds, in all countries, within very short periods – such as the current COVID-19 pandemic?

As of the beginning of April, the number of confirmed cases of COVID-19 diagnosed worldwide has nearly reached one million, resulting in tens of thousands of deaths. The pandemic likely will not peak in North America until late April, or even into May. Huge numbers of businesses in Canada and the United States are either closed or suffering huge reductions in business; unemployment is surging; and the global economy has ground to a halt. Distressed individuals and business owners are looking not only to governments, but to insurers to cover their losses.

In this article, we examine a precursor to the current outbreak – the SARS epidemic of 2003 – and its consequences for insurers. We then consider the types of claims related to COVID-19 that might be made against first- and third-party liability insurance policies, and consider the potential impact of the pandemic on insurers.

The SARS Epidemic

Coronaviruses were discovered in the 1930s, but the general public first learned about them in 2002, when a dangerous strain began spreading around the world, causing an illness that came to be known as severe acute respiratory syndrome (SARS). By the time the SARS epidemic ended in 2003, it had caused approximately 800 deaths worldwide, included 24 in Canada. It also significantly damaged the world's economy. The Canadian

[1] D. Brown, "The SARS Triumph, and What it Promises", Washington Post, July 20, 2003, accessed at UCLA Department of Epidemiology, School of Public Health.

Tourism Commission estimated SARS would cost the Canadian economy $519 million in 2003 alone and $722 million between 2003 and 2006. Worldwide losses from SARS have been estimated at $50 billion.

At the time, the insurance industry took serious notice of the potential for many SARS-related claims. Fortunately, the number of claims was low, and court decisions in Canada and the United States typically favoured the insurance industry. Business interruption claims were not covered because standard policy wordings only covered physical damage caused by named perils; courts held that neither contamination nor quarantine constituted "physical damage", and such threats were not named perils. Some commercial policies specifically excluded coverage for losses relating to viruses, bacteria, mold, and other microbial agents that can cause illness. And with respect to liability insurance, the Ontario Court of Appeal dismissed several lawsuits and class actions alleging negligence in the provincial and federal governments' handling of the outbreak.[2]

Still, the insurance industry took steps to mitigate the risk of widespread losses due to epidemics. For example, in 2006 the ISO in the United States introduced an endorsement for commercial property insurance policies, excluding "*loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease*". The exclusion would apply to coverages for property damage, business interruption, and action of civil authority.[3] In some jurisdictions, such as Australia, insurers began employing an exclusion for losses caused by the presence of any disease which must be notified to public health authorities under quarantine laws.[4]

Other insurers began offering "outbreak extra expense" coverage to businesses who are forced to close by order of public health authorities because of confirmed or suspected presence of pathogens within the business. The coverage was typically limited to additional cleaning and decontamination expenses.

First Party Insurance

Seventeen years after SARS, insureds and insurers alike face a far greater challenge – the COVID-19 pandemic. One insurance industry organization estimates that business interruption losses in the United States for small businesses alone resulting from COVID-19 could be between USD$220-$383 billion *per month*.[5] Even as the illness and resulting disruption

[2] For example, *Williams v. Canada (Attorney General)*, 2009 ONCA 378; *Jamal Estate v. Scarborough Hospital*, 2009 ONCA 376.
[3] ISO Form CP 01 40 07 06, described in ISO Circular LI-CF-2006-175, July 6, 2006.
[4] Another indication that policy wordings were generally tightened after SARS: a hotel chain, Mandarin Oriental International Limited, announced in an October 24, 2003 news release that it had secured a settlement of USD$16 million from its insurers for SARS-related business interruption losses, but noted, somewhat ruefully, that "*it was not possible to maintain the same scope of cover when the insurance policies were renewed on July 1, 2003.*"
[5] American Property Casualty Insurance Association, cited in A. Simpson, "P/C Insurers Put a Price Tag on Uncovered Coronavirus Business Interruption Losses", *Insurance Journal*, March 30, 2020.

spreads, commercial property insurers are already receiving claims, and coverage suits. For example:

- In Oklahoma, two Indian tribes have sued their insurers for losses they are incurring from the closure of their casinos during the pandemic. The Choctaw and Chickasaw Nations plead in parallel proceedings that they have "all risk" insurance policies covering business interruption, extra expense, interruption by civil authority, etc.,[6] and that their casinos have been damaged because they cannot be used for their "intended purpose" after the state ordered the closure of non-essential businesses.

- In New Orleans, Louisiana, restaurant Oceana Grill has sued Lloyd's and government officials, asking the court to declare that the spread of the coronavirus in the community is "direct physical damage", regardless of whether it is detected or suspected within the restaurant itself, and also that government-ordered closures trigger "civil authority shutdown" coverage, such that the insurers must cover its losses.[7]

- In Napa County, California, another restaurant group is suing its insurers and the county health officer for declarations that a "stay-at-home" order and mandatory closure of non-essential businesses issued by the county have triggered "civil authority" coverage, and that the spread of the virus constitutes "physical damage" to its restaurants.[8]

These examples highlight two of the most contentious issues involving first party coverage for businesses during the pandemic: whether "physical damage" has occurred, and whether civil authorities' orders have sufficiently interrupted the business to trigger coverage.

Business Interruption

The consensus to date among the insurance industry is that commercial property policies' business interruption coverage will not cover insureds' business losses without direct physical loss or damage to the insured property. This view has already been expressed by industry commentators, specifically with reference to COVID-19. For example:

- The Insurance Bureau of Canada notes that "*generally, commercial insurance policies and traditional business interruption policies do not*

[6] Complaint, *Chickasaw Nation Department of Commerce v. Lexington Insurance Company, et al.*, Case No. CV-20-35, District Court of Pontotoc County, Oklahoma, filed Mar. 24, 2020.
[7] Petition for Declaratory Judgment, *Cajun Conti LLC, et al., dba Oceana Grill v. Certain Underwriters at Lloyd's, et al.*, Civil District Court for the Parish of Orleans, State of Louisiana, filed Mar. 16, 2020.
[8] Complaint, *French Laundry Partners LP, et al., v. Hartford Fire Insurance Company, et al.*, Superior Court for the State of California, County of Napa, filed March 25, 2020. Oddly, the Complaint specifically pleads that one of the restaurants serves a "*nine-course tasting menu*" using "*the finest quality ingredients available*", and that "*staples like roast chicken, leg of lamb, and trout amandine remain as consistent year-round favorites*" at another of the plaintiffs' establishments.

offer coverage for business interruption or supply chain disruption due to a pandemic such as COVID-19."

- Colin Simpson, president and CEO of the Insurance Brokers Association of Ontario, stated that "*business interruption was never designed to respond to pandemics"*, in part because the unpredictable nature, severity, and spread of pandemics makes them impossible to price as an underwriting risk.[9]

These positions are reasonably supported by typical business interruption wordings, which provide that the insurer "*will pay for the actual business income loss that you incur due to the actual impairment of your operations* [but] *the actual or potential impairment of operations must be caused by or result from direct physical loss or damage by a covered peril to property*." Insurers typically contend that closure or quarantine of a business is not direct physical loss or damage. Courts generally have interpreted this phrase and phrases like it as requiring a tangible change to property; the presence of substances that can simply be cleaned away, such as dust or bacteria, does not constitute a tangible change.[10]

Insureds will argue that the shut-down or impairment of their operations because the virus has been detected on their premises constitutes "physical loss or damage" to the insured property. At a minimum, to have any hope of meeting the threshold of "direct" and "physical" loss or damage, an insured would likely have to demonstrate that the virus was in, on, or about the insured property, and that its presence directly and physically damaged the property and led to the shut-down or impairment of operations. But in general, that is not what has occurred. Across Canada, as in many other jurisdictions, most businesses have been ordered closed simply by virtue of being declared non-essential services. Many other businesses have shut down voluntarily, for want of customers, staff, or both.

Some United States courts have found that "uninhabitability" or "unusability" qualify as "direct physical loss", such as where an accidental ammonia leak forced the evacuation of a plant for several days.[11] We are aware of at least one American decision that concluded "direct physical loss or damage" had occurred when several houses were rendered uninhabitable due to the risk of rockfall from a neighbouring property.[12] Additionally, not every policy employs the "direct physical loss or

[9] Cited in D. Gambrill, "Will commercial BI policies cover pandemics after COVID-19?", *Canadian Underwriter*, March 24, 2020.

[10] See for example *Mastellone v. Lightning Rod Mut. Ins. Co.*, 884 N.E. 2d 1130 (Ohio Ct. App. 2008); *Universal Image Prods. V. Chubb Corp.*, 703 F. Supp. 2d 705 (E.D. Mich. 2010); and other cases cited by E. Koch, White and Williams LLP, "ISO Excluded Coronavirus Coverage 15 Years Ago", March 15, 2020. See also *Source Food Tech., Inc. v. U.S. Fidelity & Guar. Co.*, 465 F. 3d 834 (8th Cir. 2006) (Canadian beef products barred from importation into United States because of risk of viral contamination not damaged, for purposes of business interruption coverage), cited by J. Nevins, Stroock LLP, "Will Business Interruption Insurance Provide Coverage for Coronavirus Losses?", March 6, 2020.

[11] *Gregory Packaging, Inc. v. Travelers Prop. Cas. Co. of Am.*, 2014 U.S. Dist. LEXIS 165232 (Dist. Ct. NJ 2014).

[12] *Murray v. State Farm Fire & Cas. Co.*, 509 S.E. 2d 1 (Sup. Ct. App. W. Va. 1998)

damage" requirement; some simply cover "loss or damage", without the qualifying "direct physical" phrase.

If a business interruption claim is within a policy's insuring clauses, it may still not be covered. This is because some property policies contain exclusions for losses caused by "contaminants", viruses, bacteria, "communicable disease", "pathogens," or "microbes." A few policies' exclusions for and definitions of "pollutants" may also need to be examined.

Even if a claim is within a policy's business interruption insuring agreement, the extent of coverage may be quite limited. For example, the cost of "restoring" property that might have been contaminated with coronavirus could be limited to cleaning costs – and the duration of the business interruption might be limited to the time required to clean the property. Many policies have a waiting period of hours or days between the commencement of the interruption and the beginning of any indemnity. Such waiting periods could easily last longer than the period required to restore operations.

Civil Authority

As mentioned above, a second major issue for first party property insurers will be whether mandatory closures ordered by governmental and public health officials can trigger indemnity. For example, some policies state that the insurer "*will pay for the actual business income loss* […] *you incur due to the actual impairment of your operations, directly caused by the prohibition of access to your premises* […] *by a civil authority*."

However, the prohibition of access by a civil authority typically must be "*the direct result of direct physical loss or damage to property away from* [the insured's] *premises*", and must have been caused by a covered peril. Some policies also provide that the damaged property must be within a certain distance of the insured's property.

But as discussed previously, the requirement for direct physical damage will likely be the key stumbling block to coverage. Not only must damage be both direct and physical, it has to have already occurred in order to cause authorities to order the shutdown. A closure ordered simply to prevent damage from occurring will not typically trigger coverage.[13] Furthermore, a limited government closure – of a restaurant's dining room, while still permitting the restaurant to provide take-out and delivery services – might not constitute a suspension of operations at all.

[13] *United Air Lines, Inc. v. Ins. Co. of the State of Pennsylvania*, 439 F. 3d 128 (2d Cir. 2006) (closure of United States airspace after September 11, 2001 attacks was to prevent possible further attacks, not as a result of attacks that had already occurred; civil authority coverage not triggered); cited by S. O'Malley, Zelle LLP, "Commercial Property Insurance Coverage and Coronoavirus".

Outbreak Coverage

All of the preceding discussion concerns typical commercial insurance policies and their business interruption and civil authority coverages. However, insurers have also crafted products specifically designed to cover losses relating to outbreaks of contagious illness. These products can vary widely in scope, and may be less predictable in effect, as their wordings have not been tested and refined over years of underwriting (and litigation) experience.

One example is an endorsement for "Outbreak Extra Expense" coverage. For example:

> *We agree to extend the insurance provided by Part II -- Business Income to apply to your incurred necessary "extra expense" resulting from interruption of or interference to your business operations as a result of a "pandemic outbreak" declared by Civil Authority*

"*Extra expense*" is usually a defined term. For example:

> *The excess of the total cost of conducting your business during the period required to repair or replace lost or damaged property over the total cost of conducting such business that would have been incurred had no loss occurred. "Extra expense" includes the reasonable extra cost of temporary repair and of expediting the repair or replacement of your lost or damaged property including overtime and the extra cost of express and other rapid means of transportation, but excludes:*
>
> *(i) all other direct or indirect loss or damage to property, and any expense for physical property unless incurred to reduce "extra expense" loss (and then not to exceed the amount by which such loss is reduced with due consideration for salvage value of such property), or*
>
> *(ii) loss of "business income".*

We see from a standard definition that extra expense is not business income loss. It would instead be additional costs incurred over the repair or replacement period, such as costs incurred to buy equipment, rent something, *etc*. But the challenge to insureds will be the words, "*during the period required to repair or replace lost or damaged property …*," because in the case of a shut-down resulting from a declaration of a pandemic, there is never going to be a period required to repair or replace lost or damaged property. The property doesn't require repair or replacement. The property is simply shut down until it is permitted to open.

Insureds with such coverage might reasonably respond, then, that they have paid for useless or illusory coverage, because a declaration of a pandemic by a civil authority will never result in insured incurring "extra

expense," as it is typically defined. Since our courts generally strive to achieve a commercially reasonable result and to avoid policy interpretations that "vitiate coverage" and render coverage illusory, our courts might be sympathetic to an insured in this situation.

Creative insureds in this situation might well persuade a court that additional costs incurred, for example, to replace quarantined office equipment, or to disinfect equipment or work stations, or the costs of additional servers, laptops and IT to enable remote work for employees, and similar kinds of additional expense, should be covered.

Some policies may contain an extension of coverage to loss of business income sustained resulting from interruption of or interference to your business operations as a result of, for example, a "noticeable infectious or contagious disease." However, as of April 1, 2020, COVID-19 is not currently listed in Canada as a "nationally notifiable disease" (although SARS is listed), so it is not presently necessary to notify public health authorities of suspected or actual COVID-19 infection.[14] Absent that obligation, the disease is not "noticeable" and will not fall within such coverage.

Perhaps perceiving a gap in coverage, ISO has released in the United States two sample unfiled endorsements insurers might choose to offer, entitled "Business Interruption: Limited Coverage for Certain Civil Authority Orders Relating to Coronavirus" and "Business Interruption: Limited Coverage for Certain Civil Authority Orders Relating to Coronavirus (Including Orders Restricting Some Modes of Public Transportation)"; see ISO circular LI-CF-2020-013, issued February 7, 2020.

Finally, some insurers have specifically crafted policies aimed at covering economic losses resulting from epidemics and pandemics. Launched in 2018, the PathogenRX product was created in partnership between Marsh LLC, Munich Re, and epidemic risk modelling company Metabiota Inc. It is aimed specifically at industry sectors most likely to suffer losses from widespread closures and travel suspensions, such as hospitality, tourism, aviation, education, sports, and food and beverage industries.

Event Cancellation and Travel Insurance

Two types of insurance that may be most exposed to claims arising from COVID-19 are event cancellation and travel insurance.

Both of these classes of insurance may be triggered by circumstances relating to the pandemic, such as bans on public gatherings that preclude festivals and sporting events from proceeding, and the grounding of flights and border closures that dash individuals' travel plans.

[14] "Case definitions: Nationally notifiable diseases", Public Health Agency of Canada, accessed April 1, 2020.

Typically event cancellation coverage requires that the event be cancelled because of events beyond the insureds' control, so voluntarily cancellations due to poor ticket sales or diminished demand might not be sufficient to trigger coverage. Policies might also contain exclusions that limit coverage, such as for contractual liability or even illness.

Insurers who offer travel insurance will likely also face numerous claims for emergency medical treatment abroad, or perhaps for additional travel costs incurred by insureds who are forced to shelter in place abroad, or are stranded by airport and border closures. A key coverage issue might be whether insureds who contract COVID-19 did so before they travelled, such that it might be a pre-existing condition. Travel insurance is also intended to cover unanticipated events; once public authorities have issued travel warnings, or quarantines have become likely, losses arising from such risks might no longer be fortuitous, and thus not covered.

Third Party Liability

The sheer scale of the COVID-19 pandemic will certainly result in a huge number of claims against insureds in a wide range of contexts. Patients will claim against health care professionals for alleged negligence in treatment; businesses will sue each other for breach of contracts frustrated by events; citizens will sue all levels of government for allegedly delayed response or inadequate preparedness; shareholders will sue directors and officers for allegedly failing to disclose investment risks relating to the pandemic – or for dumping shares immediately before the markets began to crash in early March. Already, by March 10, 2020, a Florida couple who contracted the illness aboard a cruise ship have sued Carnival Corp.'s Princess Cruise Lines, alleging the company did not have adequate screening protocols in place before the trip. They are demanding more than $1 million in damages, according to their complaint filed in Los Angeles federal court.

The range of coverage issues that could emerge from these events is limited only by the imagination of counsel. For many types of liability insurance, such as errors and omissions and directors and officers policies, the claims that might be made against the insureds arising from coronavirus won't be qualitatively different from the types of claims ordinarily encountered, *e.g.*, negligent advice and treatment, breaches of statutory and fiduciary duty. Coronavirus might lead to an increased number of claims under such policies, as claimants seek to transfer their losses to anyone else at all. Even insureds under cyber insurance policies may face claims, as cybercriminals take advantage of increased online traffic due to telecommuting; malware is increasingly being distributed in the guise of news alerts, public health announcements, or other pandemic-related communications.

Commercial general liability (CGL) insurance is perhaps the most widespread types of liability insurance. It is also the most likely to insure against liability for "bodily injury" and "property damage". Bodily injury is typically described as follows:

> *… sickness, disability or disease sustained by any person which occurs during the Policy Period, including death at any time resulting therefrom. Bodily injury if not arising out of personal injury or advertising injury also means shock, mental anguish, mental injury or humiliation.*

Of course, COVID-19 fits within this definition, as "disease". However, even individuals who don't actually contract the illness might assert claims for "mental anguish" or "mental injury" resulting from potential exposure to the illness. For example, it is not far-fetched to imagine allegations that a business permitted an infected employee to continue working, thereby exposing customers to illness and forcing them into quarantine, leading to stress, anxiety, depression, etc. Such claims will likely fall within the CGL policy's insuring agreements, subject to all exclusions and terms.

Similarly, CGL policies typically define "property damage" to include physical injury to tangible property, as well as loss of use. Again, imagine allegations that a cleaning contractor failed to adequately maintain premises in which the virus is discovered, or a delivery company that allegedly introduced the virus into others' premises. As discussed above in the context of first party property insurance, it is questionable whether the presence of a virus within a property constitutes "damage", and whether mandatory or voluntary closure of premises might count as "loss of use". However, to the extent that such allegations *might* lead to indemnifiable losses, liability insurers may be required to defend insureds.

CGL policies contain numerous exclusions, some of which could exclude claims relating to COVID-19. Exclusions for contractual liability unaccompanied by bodily injury or property damage could preclude many purely economic claims, and professional services exclusions might preclude other claims. But one of the most important exclusions may be for pollution – if the courts conclude that a virus is a "pollutant".

A standard CGL pollutant exclusion excludes bodily injury or property damage arising from the "*actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants*" from the insured's premises. "Pollutants" are often defined as "*any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes,* [etc.]." Could *pollutants* include viruses like COVID-19 as a "contaminant", and thus a "pollutant"?[15]

In ordinary use, a contaminant typically means an impurity or some other undesirable element that spoils, corrupts, infects, makes unfit, or makes inferior a material, physical body, natural environment, workplace, etc. Within the sciences, the word "contamination" can take on a variety of subtly different meanings, depending on whether the contaminant is a

[15] It was once thought that contagious illness was caused by "bad air" – the obsolete "miasma theory". Similar thinking might lead some to argue, by unscientific analogy, that a virus is a "vapour".

solid or a liquid, and on the environment or context in which the contaminant is found. A contaminant may even be more abstract, as in the case of an unwanted energy source that may interfere with a process.

Viruses only replicate inside the living cells of animals, plants, and even other microorganisms such as bacteria. Arguably, a virus is an infectious and undesirable impurity, and might thus be considered to be a "contaminant" and thus a "pollutant".

However, given that virtually any substance might be considered a "pollutant" when found in the wrong setting, Canadian and American courts have typically interpreted pollution exclusions in a purposive manner, taking into account its commercial and underwriting history. For example, the Ontario Court of Appeal held the pollution exclusion (in the context of a property policy) precluded coverage for the cost of environmental cleanup under legislation making polluters liable for damage to the natural environment. *Zurich* notes that the courts have generally resisted insurers' attempts to apply the exclusion to situations not involving traditional environmental contamination.[16]

Furthermore, courts have typically taken a narrow view of the definition of "pollutant" because virtually any substance can be viewed, in certain circumstances, as a pollutant. A court in the United States observed that observed:

> *The terms "irritant" and "contaminant", when viewed in isolation, are virtually boundless, for "there is virtually no substance or chemical in existence that would not irritate or damage some person or property".* […] *Without some limiting principle, the pollution exclusion clause would extend far beyond its intended scope, and lead to some absurd result* […] [C]*ourts have taken the common sense approach when determining the scope of pollution exclusion clauses* […]. *All involve injuries resulting from everyday activities gone slightly, but not surprisingly, awry.*[17]

Canadian courts have held that many different substances constitute a "pollutants" for the purpose of the CGL exclusion, including fuel oil, gasoline, methanol, excessive concentrations of metals, coal dust, and sewage. These substances have typically been produced intentionally (*e.g.*, fuel, methanol); as an expected by-product of intentional activity (*e.g.*, coal dust). None of these substances are able to self-replicate, or increase their volume to spread unchecked in the environment while maintaining polluting concentrations. In these respects, viruses are not likely similar to other recognized "pollutants".

Furthermore, most cases in which the exclusion has been upheld have involved the release or escape of such substances into the natural

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[16] *Zurich Insurance Co. v. 686234 Ontario Ltd.* (2002), 62 OR (3d) 447, 2002 CanLII 33365 (ONCA).
[17] *Pipefitters Welfare Educ. Fund v. Westchester Fire Ins. Co.*, 976 F.2d 1037 (7th Cir. 1992).

environment, *i.e.*, into or onto the ground, or groundwater, or the open air. The exclusion has not typically been held to apply to releases occurring within human environments, such as buildings. For example, the escape of carbon monoxide from a defective residential furnace was held in *Zurich* not to constitute "pollution". It would usually been seen as peculiar to describe as "polluted" a store counter contaminated with a virus, or to consider a house "polluted" because a cardboard delivery box from Amazon shows traces of a virus.

On balance, it is unlikely, but not impossible, that a court would conclude that COVID-19 is a "pollutant", for the purposes of CGL coverage. But if it did treat the virus as a "pollutant", that would not necessarily oust coverage. The standard CGL pollution exclusion contains several exceptions (*e.g.*, for damage to premises belonging to others at which the insured is performing operations). An insurer relying on the exclusion would also have to demonstrate that a "discharge, release, escape", etc. has occurred, verbs that are incongruous with the spread of a virus predominantly through human contact. Finally, some policies also provide limited pollution coverage pursuant to endorsements, in which coverage may be extended if a "pollution incident" is discovered promptly after it commences, and may be subject to indemnity sublimits or increased deductibles.[18]

What Will Happen Next?

It is much too soon to predict how the insurance market will change as a result of the COVID-19 pandemic, but several recent developments may offer clues:

- Some insurers are already drafting new exclusions to be appended to liability policies, excluding claims arising directly or indirectly from communicable diseases in general, or specifically from coronaviruses.

- Legislators in New York, Ohio, Massachusetts, and New Jersey have introduced legislation that would compel insurers to retroactively cover business interruption losses during periods of emergency due to COVID-19, to be accomplished by a special levy collected by state-level insurance regulators from all insurers doing business in those jurisdictions.[19]

- Looking further ahead, some governments might choose to establish national pandemic reinsurance programs, similar to those set up after the attacks of September 11, 2001 to address the risk of terrorism. Such programs, including that established by the

[18] If a virus were held to be a contaminant and pollutant, it raises the possibility that loss resulting from the virus could be covered under environmental impairment liability insurance policies – a prospect described as "bizarre" when the idea was floated in 2003 in relation to SARS: C. Harris, "Insight: the Cost of SARS", *Canadian Underwriter*, June 1, 2003.
[19] C. Wilkinson, "N.Y. introduces a bill on pandemic-related business interruption claims", *Business Insurance*, March 30, 2020.

United States' Terrorism Risk Insurance Act, help protect against the economic effects of terrorism, backstopping insurers who suffer heavy terrorism-related losses and thus encouraging insurers to provide terrorism coverage at affordable rates.

Perhaps all that can be said with any certainty, at this stage, is that the current pandemic will have extreme and potentially unforeseen impacts on the insurance industry, as on all other aspects of society and the economy. The courts have always decided insurance coverage disputes within broader debates about risk allocation, commercial certainty, compensation for losses, and even personal responsibility. COVID-19 is about to make those debates much, much more complex.

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