

In times of crisis, insurers are supposed to ‘lose’ money

By RHONDA D. ORIN

NEW YORK DAILY NEWS | JUN 13, 2020 | 5:00 AM



The purpose of insurance is to insure. This means more than collecting premiums and investing them profitably. It means reimbursing policyholders for their covered losses. When there is a crisis affecting lots of policyholders at once, insurers are supposed to pay lots of claims. This is not “losing” money. It is doing their job.

Insurers have forgotten this basic truth. That is obvious in their outrage at being asked to pay their policyholders’ COVID-19 losses. “Only the government has the financial resources to deal with this pandemic,” they [protest](#).

That’s not true if they have done their jobs correctly. That is what reserves, reinsurance and other contractual relationships among insurers are for.

More importantly, the mere fact that insurers may owe a lot of money is no reason for them not to pay it.

Insurers are different from the businesses they insure. They don't sell clothes or cars or food; they don't provide services or skills. All they sell a promise of financial protection if a crisis comes. Most of the time, there is no crisis and the insurers effectively win the bet.

But when the crisis comes, it is time for them to pay up.

Insurers proclaim there is no coverage here for various reasons. But by raising the threat of their own bankruptcies, they reveal that much coverage really is owed.

Their denials start with the assertion that losses must come from "physical damage," which they claim a virus does not cause. That argument is wrong. "Physical" is different from "structural" or even "visible." Courts for years have found coverage for losses arising from odors, mold and the like. If insurers intended to limit coverage to structural, visible damage, that is what their policies should have said.

Their fallback is that coverage is barred by a "virus" exclusion. Wrong again; there is no omnipotent "virus exclusion" in all policies. While various exclusions use the word "virus," they are not in all policies and can be overridden by exceptions and other coverages.

And even when a policy has a "virus" exclusion, it shouldn't. Historically, the industry added the word "virus" to standard-form exclusions for bacteria and mold after the SARS pandemic in the early 2000s. It did so as part of its standard practice of drafting exclusions or sublimits whenever risks become apparent.

But this tactic hollows out the coverage they are selling and ultimately defeats the point of having it. If insurers exclude or sublimit every risk that they can identify, that whittles down the protections they supposedly provide.

Ever since Hurricane Andrew pummeled Florida in 1992, leading to significant insurance payouts, the insurance industry set out to avoid such payouts again. Through liberally adding exclusions and sublimits, they unfortunately have made great headway.

In a 2012 [study](#), the Consumer Federation of America found that catastrophic events that followed Hurricane Andrew have had "minimal impact on insurers." For example, while insurers paid out 64% of losses stemming from Hurricane Andrew, they paid out less than 50% of losses triggered by Hurricane Katrina in 2004, 12 years later.

"Property-casualty insurers have paradoxically emerged as masters of risk avoidance, rather than continuing their historic role of risk taking," the study concluded. Based on insurers' response to COVID-19, the study's author, J. Robert Hunter, said recently, "The situation has not changed."

But this time, the insurers may have overplayed their hand. Legislatures and insurance departments nationwide are investigating how to make property insurers accept responsibility for COVID-19 business interruption claims. Even President Trump recently announced that insurers should pay up.

With the death rate, unemployment and the specter of bankruptcies soaring, the entire country is in a world of hurt. We cannot allow our insurers to stroll away with their hands in their pockets — the one industry left untouched.

Orin is managing partner of the Washington, D.C., office of Anderson Kill, which represents policyholders nationwide in insurance coverage disputes.