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Opinion: Insurers who promised to cover businesses must pay COVID-19 losses

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Businesses hurting from the pandemic may be looking over their insurance policies to see if insurers will cover their losses, but whether there is coverage for COVID-19 business income loss depends on the specific language of each policy, and the unique facts of each claim. This truth, however, has not prevented the insurance industry from making broad arguments against coverage for the claims.

What is good for the insurance company goose is good for the policyholder gander, so let's agree on this broad fact: Insurers marketed and sold business income loss insurance with a promise to cover claims arising from unanticipated events. Now that a global pandemic has caused the deepest recession since the Great Depression, they are refusing to honor their promise.

In advocating the denial of COVID-19 claims, insurance companies are relying on arguments they routinely reject when made by policyholders.

Broadly speaking, insurance companies do not consider the financial impact of their decisions on policyholders. Insurance companies deny claims based on the language in the policy, ignoring any appeals to sympathy. I have yet to see an insurance company cover a claim to prevent its policyholder from filing bankruptcy.

But when the pandemic led thousands of businesses to submit claims for loss of income, insurance companies insisted there were simply too many claims being made and payment would bankrupt the entire industry.

As insurance companies denied claims, state legislatures proposed laws that would prohibit insurers from denying coverage. Immediately, the insurance industry expressed outrage over possible government infringement on their freedom to contract. Insurers promised constitutional challenges based on the contracts clause of the constitution, and were largely successful in their lobbying efforts to prevent enactment of the laws.

Those same insurers support the Michigan legislature's current efforts to grant immunity against lawsuits arising from COVID-19, regardless of the impact it may have on policyholders' freedom to contract.

Insurance companies often deny claims with an explanation that the type of loss was not included in its calculation of the insurance premium. But with virus-related business income loss, insurers were specifically informed of the risk and could have excluded it from coverage.

In 2006, the Insurance Services Office circulated an endorsement that if attached to an insurance policy would exclude virus coverage from business income loss coverage. Many policies were issued without the exclusion, yet insurers are still denying COVID-19 related claims under those policies. By not excluding virus outbreaks by endorsement, didn't insurers increase the premium charged to policyholders for covering the known risk?

Without including a virus exclusion in the policy, insurers are denying COVID-19 related business income loss claims based on policy language requiring "direct physical loss or damage" to property.

The insurers' argument is that a virus does not cause physical destruction to property, and therefore does not fall within policy coverage. But that is not a proper reading of the language, "direct physical loss or damage." Rather, the "or" between "loss or damage" means either loss or damage is covered.

When COVID-19 led to the shutdown of businesses, their owners suffered direct physical loss to property, commonly referred to as "loss of use," which does not require physical destruction to the property be covered under the policy language.

Broad arguments have limited persuasiveness without considering the unique facts of a claim and the specific insurance policy issued. With respect to COVID-19 related claims, insurance companies are making broad arguments of convenience which they will continue to reject when made by their policyholders.

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