

Insurers should be willing to negotiate coronavirus claims to avoid courts being overwhelmed, study

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Insurers should be open to negotiating coronavirus claims to avoid courts becoming overwhelmed with disputes, a new study warns.

Attempts by insurers to avoid paying out to those affected by the pandemic may lead to cases going straight into the law courts, when it would be better for both sides to try to negotiate extra-judicially, using alternative dispute resolution methods such as mediation and arbitration, according to the research.

Dr. Kyriaki Noussia, from the University of Exeter Law School, is analysing how "force majeure" clauses—often found in contracts and allowing the non-performance of the contractual obligations due to an extraordinary event—are being used in the [insurance industry](#).

Her study, published in the *Journal of International Banking Law & Regulation*, warns many insurers will reject satisfying coronavirus claims due to force

majeure, meaning cases will end up in court. Many policyholders will find that their business interruption insurance policies do not cover the impact of coronavirus, due to certain exclusions in the risks covered or in the way that force majeure is interpreted by insurers.

Dr. Noussia said: "Clearly many contracts can't continue as usual, and people are looking for compensation, but many insurance companies don't want to assert the existence of force majeure for business interruption claims due to coronavirus.

"People will have to closely examine the wording of their policies to see how damage is defined in order to demonstrate they should be compensated by their insurer. Some policies will have exclusions and others will not, so people should read their [policy](#) carefully before submitting any claim and seek advice.

"It is likely the courts will be flooded by [insurance claims](#), leading to a backlog in cases being heard. The right approach would be for the insurer not to just immediately reject claims, but to try to negotiate a sum to be awarded as compensation if possible. Rather than saying no and passing the problem to the courts it is better if insurers and claimants work together to find a solution.

"This may include negotiating a premium for new contracts, readjusting existing premiums for contracts close to their renewal or using alternative dispute resolution methods to satisfy a claim."

The study also warns those looking to renew their insurance will have to pay more for some policies, particularly if they want to be covered against the impact of coronavirus in the future. Insurance companies may refuse to provide coverage against coronavirus.

It is likely that the impact of coronavirus will also affect commercial contracts, with one side wanting to claim damages and the other wanting to trigger default force majeure clauses to either temporarily suspend obligations about performance in their contracts, and to protect themselves against failures to perform what is stipulated in the document, or to maintain that they are excused from performance altogether.

Force majeure will also be used by people wanting to amend or cancel travel plans, and those about to travel this year may need to amend the scope of their travel insurance cover, or be prepared to travel without such coverage being included as it is not anymore a "fortuity" but a "known event" and hence not covered.

Some insurance contracts have detailed wording about what is covered by "force majeure", normally acts of God such as earthquakes and volcanic eruptions, floods or cyclones, war, strikes and abnormally bad weather, as well as some government actions. The difficulty in current business interruption claims is proving the casual link between the government closure measures and the occurrence of business interruption.

To be able to demonstrate the existence of a claim for business interruption, there has to be direct physical loss or physical damage to the property and the cause of the business interruption damages businesses are seeking has to be direct physical loss or damage affecting their business operation and turnover. To be able to calculate the losses incurred in a [claim](#) for business interruption, companies will need to demonstrate previous turnovers, as well as budgets and revenue forecasts for 2020 and subsequent years. They may also have to show [additional costs](#) related with business interruption and consequential losses includes bringing in additional temporary workers or third-party contractors, claims preparation costs, contractual penalties, or public relations costs. Insurers may argue at times of disasters very few customers or clients would have patronized the business anyway.

Policyholders often can't negotiate the coverage of [business interruption](#) policies, as such policies are

by nature standard form policies, called adhesion policies not allowing room for negotiation. The study recommends if wording is ambiguous decisions should be made in favour of the policyholders and against insurers. To avoid decisions constantly favouring policyholders, insurers should use the prior three years of the policyholder's historical financial revenue and cost data to value losses.

US courts have, so far, predominantly seemed reluctant to rule in favor of the existence and provision of [insurance](#) coverage for Covid-19 related claims; however a different approach was taken by a French court in late May 2020, where it was decided that an insurer has to pay a restaurant owner two months' worth of coronavirus-related revenue losses. Although the insurer said it would appeal, the ruling will certainly be watched closely.

Provided by University of Exeter

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