



GlobalPro

CLAIMS ADVOCATE SPECIAL ISSUE

Condominium Association Help for Recovery: COVID-19 Global Pandemic insurance information you can use



USNS COMFORT docked in New York City. Photo by Daniel Lee

REPORTING YOUR CLAIM

It is important to understand that the words included in insurance policies cannot be defined singularly, rather, they obtain their meaning from the words around them and must be read together. For example, the word “leak” in the context of a policy is frequently used to describe a water loss that is long term and ongoing, and therefore not covered. Further, if the language is ambiguous, and the Insured proposes a reasonable definition, the terms will be construed in favor of the insured. However, to avoid a long debate over the intent of policy language, stick to the facts. Ask yourself simple questions such as: What do I know? Am I an expert? Who represents my interest?

You know you suffered loss or damage if you had to cease normal operations, shut down or clean and disinfect your property. Beyond that, you are not sure, so you don’t know. Stick to the facts. If you are a property manager, despite your years of experience, you are not an insurance claim nor a virus expert. You should not profess to understand why the virus exists or how it caused damage to your property or even how it harms people or may be covered by the policy. Be careful who and what advice you rely on when reporting a claim. In states like Florida, your broker cannot legally represent you in your claim. Similarly, no one from the insurance company represents your interest. Only a lawyer or a public adjuster can represent your interests in a claim.

The insurance companies and their lobbyists were fast and loud to paint the grim picture that insurance policies do not provide coverage for losses related to this pandemic. Their argument was broken down in two parts. First, they argued that COVID-19 does not cause physical damage to insured property. Second, Insurer’s complained that the policy forms were intended to exclude coverage for virus related loss or damage.

The first issue was debated, but quickly, local and state governments widely adopted the opinion that the virus can, in fact, cause property loss and damage. For instance, the City of New York issued an Emergency Executive Order in response to COVID-19 and the Pandemic, stating in part “because the virus physically is causing property loss and damage.” Jurisdictions such as, Broward County, Washington, Colorado, North Carolina, New Mexico, Indiana, and the City of Los Angeles have all issued similar orders.

The second issue has created even more confusion. Most state legislatures have widely held that it was their understanding that insurers only intended to limit losses caused by viruses, not exclude coverage for a global pandemic. Also, there is growing debate as to whether the mere presence of the virus, or even the chance it may be at the insured location, triggers coverage for losses. These issues are similar to insurance coverage matters for gas, water contamination, mold or soot.

Further complicating the coverage issues are the evolving government orders that restrict movement and operations. Important regulations were enacted to curb the spread of the virus that create distinctions between essential and nonessential business. However, the definitions for those businesses varies from jurisdiction to jurisdiction causing conflicts between the Local, State and Federal levels.

All these issues contribute to an already complex insurance coverage situation. However, the issues that plague these claims are part of a growing trend to increase rates and limit or exclude coverage. Additionally, a lack of transparency and confusing policy language has led to an increase in litigation. Moreover, the insurers are modifying policy forms from one renewal to the next through undisclosed endorsements. The result is that brokers are often left unchecked as it has been determined in most states that they are not fiduciaries. So, who is protecting your interest?

Looking back at the 2017 to 2018 Hurricane Season, most insurers limited, if not excluded, coverage for obvious hurricane damages by enforcing “wind-driven rain” provisions. Insureds have repeatedly testified to having never received notice of the change in their policy forms despite the recent presence of this provision in most Community Association and Business Owner policies. There were certainly no public notices or open debates for the approval of such forms. Consequently, although state laws require certain properties such as Community Associations to be fully insured, this would appear impossible under the current regime of Insurer practices. Meanwhile, the insurance industry has continued to enjoy growing balance sheets and record profits.

When the insurers started to lose the war on coverage for the global pandemic, they switched gears and claimed to have a lack of resources to pay claims. However, proper analysis of balance sheets, reserves and coverage for losses renders a different set of facts. First, even if there is coverage, most recoveries are limited, and the total payable loss would be far less than what has been published by the insurers. For instance, the insurers talk about a surplus or reserve and then gross revenue for certain industries, when most policies only owe for net income, which is certainly different than gross revenue. Second, most of the lawsuits filed are claiming entitlement to only civil authority coverage, which is most often a limited coverage and, in some cases, only \$25,000.

Even with all these coverages issues, there are still some policies that clearly provide coverage for loss and damage due to communicable diseases. So why did leaders in the insurance industry profess that, “Business interruption policies do not, and were not designed to, provide coverage against communicable diseases such as COVID-19,” in an open letter to the House Committee on Small Business dated March 18, 2020? Historically, all-risk policies did not exclude coverage and only through endorsement did insurance



companies attempt to limit or exclude coverage for viruses. Some media has pointed to exclusions for pollution, but again, there is a disagreement amongst some jurisdictions, and these exclusions do not preclude coverage for damage caused by viruses. Moreover, some policies are completely silent on viruses, epidemics, and pandemics. Clearly, this issue is not simple and the accuracy of reporting and handling of these claims is paramount to their success.

Most of the issues are largely contingent on the outcome of countless lawsuits or proposed legislation throughout the country. Many of the lawsuits ask for declaratory relief and immediate clarification. Due to the complexity of the coverage issue and the ongoing debates, it is important to ensure that you properly report your claim and continue to monitor the situation. Since the situation is continuously evolving from one day to the next, we continue to monitor trends and report on relevant issues impacting our clients and policyholders.

HOW TO HANDLE A WATER, FIRE, ETC. LOSS AT YOUR ASSOCIATION DURING THE PANDEMIC?

There is a justified focus on virus-related mitigation and recovery, but all policyholders must practice preparedness and anticipate other losses at their property. More than ever, you need to have a plan in place to respond to the needs of unit owners and tenants that may be damaged by water, fire, hurricane or another calamity. As a board member, property manager or owner of a property, you must consider the foreseeable risk of infection or spread of COVID-19 in your protocol. This includes revised notice requirements and increased costs. While most contractors would wear construction masks to prevent the inhalation of dust, those

masks might not adequately protect against a virus. Also, the mask alone may not be enough. Similarly, the disposal of materials or transfer of materials and equipment from the loading area to the affected units must be considered, so as to not contaminate other areas and units with the virus. Since these and other costs must be considered, you need to ensure that the reporting of the claim and the documents submitted in support of your loss, accurately reflect the cause of the loss and the amount of damages sustained.

CONSTRUCTION IS ONGOING, IT'S ESSENTIAL, BUT WHAT IF IT DAMAGES YOUR PROPERTY?

Most local, state and federal emergency orders consider construction an essential business and most construction sites remain open. Traffic on and off site must be monitored, and many jurisdictions have implemented strict guidelines, which if not followed, can result in an immediate shutdown. If onsite or offsite construction were to cause damage to your covered property, accurately accounting for the necessary scope of repair, with consideration for the virus, is essential to the success of your expedited recovery. Avoid issues like these from the outset of the loss by contacting us first to explore all your options. Now more than ever, navigating the process is

complicated and costly. Assessing the damage takes additional effort, more time and increased risk. Due to COVID-19, the tendency to engage counsel earlier on in the process is at an all-time high, despite the fact, that collecting data and information in the field remains paramount to taking proper, cost-effective action. The construction-related services of GlobalPro add value and have proven to save time, money, and out-of-pocket expense. More so than ever, claimants and insureds should consider professionals, like GlobalPro, to represent their interests in these claims.

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Ready

An essential component of our pre-loss program is the development of a disaster response plan.



Recover

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Rebuild

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Need to report a claim?
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