Coronavirus Legal Fight Between Insurers and Businesses Goes Global -- Update

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By Alice Uribe

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SYDNEY -- A debate over whether business-interruption insurance policies held by millions of companies cover a pandemic is increasingly being tested in global courts, drawing in regulators, insurers, industry groups and company owners.

Insurers say the policies are intended to help policyholders recover from events such as fires, which lead to repairs and rebuilding, and were never intended to cover pandemic-related claims.

For businesses around the world, the courts' rulings could be the difference between survival and bankruptcy. Restaurants, beauty parlors and other companies saw their policies as a safety net that would insulate them against unforeseen shocks. Instead, the shocks came when insurers turned down their claims for policy proceeds citing various terms and conditions.

Following the SARS outbreak in the 2000s, insurers have sought to exclude pandemics from their policies partly because they say it isn't economically viable to provide cover for events where all policies pay out at once, and because they didn't collect premiums for virus-related claims.

Now, policies are being put to the test.

In the U.S., legal fights over business-interruption policies are happening on a state-by-state basis, which allows for a variety of judgments based on how each policy was worded. The volume of plaintiffs and variety of venues raise the chance of sympathetic judges or juries finding for small-business plaintiffs, some lawyers say.

Outside the U.S., regulators and insurers are pushing for judgments that can set a precedent that all sides that can then follow.

Standing between Australian insurers and payouts to customers for business losses during the pandemic is a more than 100-year-old law that was repealed several years ago.

In France, a court found in favor of a restaurant owner who sued his insurer over the rejection of a claim for cover during government-ordered lockdowns.

In the U.K., a court on Tuesday ruled mostly in favor of policyholders in a test case brought by the Financial Conduct Authority to resolve what the regulator said were "key contractual uncertainties" associated with business interruption cover. The judges looked at more than a dozen different policy wordings from eight different insurers.

The FCA said the more than 150-page judgment found that most, but not all, of the disease clauses considered by the court provide cover. The ruling removes several roadblocks to successful claims, while signaling which may fail, the regulator said.

"The ruling is likely to be considered as a partial victory and it could have a ripple effect for the entire marketplace, with its conclusions likely to be applied to other affected claims," said Rafi Saville, forensic partner at U.K.-based accountancy firm HW Fisher. "However, the decision today could possibly add to the confusion experienced by many business owners."

Industry watchers had keenly awaited the result because it may influence jurisdictions world-wide, as claimants await payouts or resolution of disputes.

"It was the insurers who wrote these policies and we know that insurers routinely rely upon the fine print in their own policies when it suits their interests," said Josh Mennen, a principal lawyer at Maurice Blackburn Lawyers.

In Australia, Maureen McCunnie, who owns a market-research company in Melbourne, lodged a complaint with Australia's financial ombudsman after her insurer rejected a claim for lost income. If the complaint fails, the 55-year-old fears her savings won't keep her company afloat more than 12 months.

Ms. McCunnie's company, JB Market Research Services, relies on face-to-face interviews with clients including retailers and pharmaceutical manufacturers. Bookings worth thousands of dollars were lost after authorities imposed coronavirus restrictions in mid-March, she said.

"If I can't provide my service, I am covered for business interruption," said Ms. McCunnie, estimating the company paid about $30,000 on premiums over 17 years. "Well, I can't do my service."

The owner of Sydney's casino is suing insurers that rejected its claim for business-interruption cover. The Star Entertainment Group Ltd. argues its policy is valid because the government forced it to shut down.

Meanwhile, Australia's insurance industry trade group wants a court to rule whether insurers can rely on policies that reference the Quarantine Act 1908 to exclude a pandemic, given the law was repealed in 2016.

The test case in the Court of Appeal in New South Wales state, home to Sydney, could set a benchmark for deciding the validity of claims.

"We're confident that our exclusions will hold up, but of course, where anything is going through a court there is always litigation risk, even if it's small," said Peter Harmer, chief executive of Insurance Australia Group Ltd.

Phil Hogan is among business owners awaiting the Australian test case's outcome. The Jade Buddha bar and restaurant in Brisbane, which Mr. Hogan co-owns with his brother Gary, has been 45% full after the government restricted capacity. Before the pandemic it was popular with tourists, city workers and celebrities, including Kim Kardashian who held an event there.

Mr. Hogan's policy referenced the Quarantine Act in detailing exclusions, so his claim was rejected. "We should have been sailing through this saying 'great, thank god, we have a good insurer' and we'll come out the other side," he said. "We've had the opposite experience."

Businesses around the world have chalked up one victory. A restaurant owner in Paris reached a financial agreement with AXA SA, among the world's largest insurers, over his business-interruption claim. AXA had been appealing a court decision in his favor.

AXA said other judges had supported its position in claims disputes with other restaurateurs since then.

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