

## Company Participants

- Finley T. Harckham, Senior Litigation Shareholder
- Lauren E. Lonergan, Shareholder
- Matthew Palazola, Senior P&C Insurance Analyst
- William C. Wagner, Shareholder

## Presentation

### Matthew Palazola {BIO 20969450 <GO>}

Good morning, everyone. Welcome to our Bloomberg Intelligence briefing explaining business interruption insurance in a COVID-19 world. This call is being recorded. There will be a replay available on the Bloomberg Terminal.

Just briefly what is Bloomberg Intelligence. We provide in-depth research and data on industries and companies. We cover over 135 industries and over 1,900 companies. The disclaimer, there is no actual slides for this call.

These are the speakers today. You can access our research on BI INSUR that's property casualty insurance research, BI COVID is all of the COVID related research and VRUS GO is the hub on Bloomberg for kind of all COVID information.

So clearly, we are in unprecedented times. Businesses around the world, big and small are being disrupted by the coronavirus. These businesses have insurance. But how and in some cases, if that insurance will respond is a huge question? Since the virus started to spread in US, our initial read has been that insurers may be able to avoid large scale claims based on communicable disease exclusions and property damage requirements, but risk seems to be growing. Lot will depend on court interpretations, secondary effects and other insurance lines and even actions by the state and federal government.

Also in the financial analysis side of things, we are often not experts in the legal interpretation of insurance contracts, so we've asked some experts in the legal interpretation of the contracts to join us. We have Finley Harckham from Anderson Kill and William Wagner and Lauren Lonergan from Taft. They are, I believe all attorneys on the side of recovering insurance from insurance companies on behalf of insureds.

So I am just going to dive in with first question on business interruption insurance in property policy. So Finley, can you just talk about some ways business interruption is triggered in property policies.

### Finley T. Harckham {BIO 3046626 <GO>}

FINAL

Sure. The -- in fact business interruption coverage is the spot to look forward is in commercial property policies, and the trigger or the business interruption coverage in their various kinds, which we're all going to talk about is property damage. So you got to have property damage somewhere to trigger one of these coverages. The typical situation is you have damage to your own property, a fire, a flood, whatever it may be here in this case, the question is, if there was a presence of coronavirus would that be property damage to your premises. And then if there is property damage, you get essentially lost profits coverage, business interruption coverage or the time period that it would take to restore or repair the damage property. So that -- excuse me -- that's the basic property damage and business interruption coverage.

Then there are -- but there are various extensions to the business interruption coverage. I'm going to touch on one, and then pass it over to Bill and that is contingent business interruption. And contingent business interruption provides coverage for your loss, if you're the policyholder that results from property damage to property of a supplier or a customer.

And so this is a -- this is a supply chain related loss. Let's say you -- your business is dependent upon suppliers in China, and they suffered property damage there or even through the means of transportation that gets the goods or supplies to you from a place like China, they can be considered a supplier as well, like a port or in airport or a shipping company. So if they suffer property damage and that results in the loss [ph] you -- that can be covered.

And then another category of contingent business interruption coverage is called leader property coverage is loss that you suffer because of damage to a property that attracts business to your business. And a classic example is, if Disney World -- when Disney World was shutdown in Florida, if you have a hotel nearby that's a leader property, an attraction property you get business because Disney World is there. And if Disney world is closed because of property damage that would trigger and you suffer a loss that would trigger your contingent business interruption coverage.

**Matthew Palazola** {BIO 20969450 <GO>}

Okay. So Finley before I jump to Lauren and Bill on that, is contingent coverage is that an add-on or is that -- would an insured pay more for that or is just that -- that standard.

**Finley T. Harckham** {BIO 3046626 <GO>}

It's a fairly standard coverage, but there are different versions of the coverage that can be found in various policies. But most commercial property policies will have some form of contingent business interruption coverage. If you look at the policy carefully to see how broad that coverage is.

**Matthew Palazola** {BIO 20969450 <GO>}

Bloomberg Transcript

Okay. That makes sense. So for Bill and/or Lauren, maybe can you talk about obviously we're having federal governments mandating shutdowns and stay in home orders, how does a civil authority trigger a play into that?

### **Lauren E. Lonergan** {BIO 20184195 <GO>}

(Multiple Speakers). Yeah. The civil authority coverage is triggered when you have a governmental order prohibiting access to property typically the insureds property and it is due to the property damage or physical injury to either the insureds premises or some third parties premises. And the key issues really are the -- whether there is the type of property damage the physical injury that I think we're going to talk about in a minute, but also there has to be -- there has to be a nexus between the governmental order and prohibition and access and the property damage. And it's -- we've been looking at the orders, some of them are helpful. We have some ideas about how government could potentially expand on those and help insureds, but that's the basics of how the coverage works. And what you get for that coverage is the same thing as you get typically for ordinary business interruption coverage lost profit extra expense [ph].

### **Matthew Palazola** {BIO 20969450 <GO>}

Okay. Great. So how about Bill you could tackle this one. So it seems like obviously the multi-billion dollar question in all of this is going to be can the virus or the presence of the virus or in some way the virus just be construed as property damage?

### **William C. Wagner** {BIO 20253176 <GO>}

Well, so that is a million dollar question, and it really depends on the case law state-by-state basis, when you start looking at it at a high level. There is unfortunately a case in Ohio that had started out with someone, who had mold or mildew on the side of their building and brought a property damage claim under their insurance policy. And the ruling essentially said that it's something that could be washed off a bleach, it was a temporary condition, it didn't affect the structure or integrity of the house, it wasn't destroying the wood, therefore, there is no property damage. And that sort of predicated in the line of cases, including in Michigan.

And there is one key line in that case, though, it says that the only time that it would be necessary to replace the signing would be on recommendation of a certified hygienists or a physician for health concerns. I think that's where a lot of the case law turned, a lot of the cases that have taken the opposite approach has focused on -- does the presence of contaminant render the property contaminated, uninhabitable or unfit for its intended use. And then a string of cases that have looked at asbestos dust, fumes from spilled ammonia, fumes from gasoline, spills inside of a premises, mold, off-gas and from Chinese drywall, all these instances could result in damage to property -- physical damage to property, and it's really turns on again case by case basis. And when you look at that, these policies are going to be interpreted from the point of what would an average insured understand the policy to cover.

FINAL

And I think that will be some arguments that could be made to say that yes this is property damage. The -- one of the questions that comes in is, how are you going to prove that you have property damage. We are talking to certified industrial hygienists that are now able to take swab samples of surfaces to determine whether or not the COVID virus is present.

And there are some studies that have shown in fact go into the original SAARs, the original virus began this in 2003. There is a study that shows that particular virus was able to stay viable on a stainless steel surface at a low temperature for up to 28 days. And I think there is a recent study by the CDC that looked at some of the cruise lines that also concluded that a virus was able to be found 17 days after passengers debarked from one of the cruise lines.

So as a result of the present of the virus, you're going to have health department, medical experts, certified industrial hygienists, others testify that the premier -- presence of the virus renders the property either uninhabitable, unfit for its intended use or contaminated, so that it requires a robust disinfection. So that's how we get over the hurdle of proving that, yes, it is physical damage to property.

**Matthew Palazola** {BIO 20969450 <GO>}

Okay. So two follow-ups on that. First one is, so you mentioned, I guess, there is some previous case law is, how does that compare to perhaps coverage issues or other things in the past, meaning, is there a lot of precedent to go back on this and is there much related to viruses and do they differ from other contaminants?

**William C. Wagner** {BIO 20253176 <GO>}

So the case law that deals with bacteria and other pathogens goes back, I want to say to the 2000 time frame at least some of the case law that I'm aware of. And I think that case law looks at whether or not it requires some sort of a remedy, some sort of a direct action to make the property habitable. One of the things that I'm hearing from certified industrial hygienists is that this bacteria if you left it alone, it would essentially die on its own within a month. But that's just not practical in a business setting, right. We have to get in there and clean the surfaces to make sure that the containment won't spread. So I think that is going to sort of make this case different than some of the others.

In the asbestos setting, asbestos is a contaminant that is going to be present until it's cleaned up. There are some cases that have looked at mold and mildew and other bacteria, Legionella, Legionnaires' disease, et cetera, and they have focused on, is there a standard that requires a clean up versus just having a presence. There is some cases, where mold was present. And the court held if it's not required to be cleaned up because it's not at that level, then it doesn't amount to property damage. But I think all these cases are going to sort of be markers on how a court will eventually interpret this decision on a state-by-state basis.

**Matthew Palazola** {BIO 20969450 <GO>}

Bloomberg Transcript

Okay. Are there any states that you would view as more policyholder friendly on this -- on these issues?

**William C. Wagner** {BIO 20253176 <GO>}

Well, I think, Illinois, Colorado, New Jersey, Oregon, New Hampshire. New Hampshire just had a Supreme Court case, where they deferred the issue of whether cat urine odor resulted in permanent property damage. So again, it's going to be on a case-by-case basis. Some of the cases that would be more in favor of the policyholder, would be possibly Ohio, likely Michigan. But I think some of these other cases or other states would be more favorable to a policyholder.

**Matthew Palazola** {BIO 20969450 <GO>}

Okay. So we move back to Finley. So really how do -- we're hearing is that, that viruses maybe excluded or they are not a covered peril. How does that square with let's say it is property damage, how do those two things interact?

**Finley T. Harckham** {BIO 3046626 <GO>}

Okay. So first let me just start by pointing out that some -- there are -- there are buyers exclusions in many policies, but there are some policies that expressly cover communicable diseases, whether it would be disinfecting cause or prohibition of access are as a result of communicable disease. So the mere fact that, if there are exclusion in some policies doesn't mean they exist everywhere.

You got to check your policy to see you may actually have coverage, it's not -- it's not standard, but especially some of the bigger programs may have some specific coverage. But with respect to the exclusions, you really got to look carefully at what the exclusion covers. Now, many policies do have exclusions that are -- that are covered viruses and that covers viruses with respect to all of the different coverages in the policy, and -- and those policyholders may just be out of luck.

But that is not the case in many policies, some policies have a communicable disease exclusion or a virus exclusion that may apply to some or not all coverages that may be found in a pollution or contamination exclusion. The word virus may appear in there. And again, sometimes those will apply to some, but not all coverages. I was looking at a -- at a client's policy, the other day that had a definition of pollution and contamination for an exclusion, it included the word virus, but it was prefaced with the language that said this exclusion is limited to land, air and water.

So what's not included in land, air and water, well indoor contamination may not be included in land, air and water. In fact, in New York, there is a line of cases or at least a few cases, including a case by the highest court in New York, some years back, which said that asbestos particle inside a building did not constitute contamination of the atmosphere and we're not -- did not fall within a pollution exclusion. And there is a more recent case, federal court case in New York that has also held that more recent pollution exclusions do

not apply to indoor contamination. So if you can build an argument for your direct bottle of property damage and business interruption to your own premises, based upon indoor contamination, if that's where your virus exclusion exist, you may very well have coverage.

As Bill said, this is going to be a state-by-state analysis because that's the way insurance policies are interpreted. Every state comes up with its own law on interpreting these policies even though many of the policies are the same. But the takeaway on these exclusions is, you have to look carefully to see how broadly applied they are, and where they appear in the policy because if they're in a pollution and contamination exclusion, it might not apply across the board, it might not apply to indoor contamination that may trigger your own property damage coverage and may trigger contingent business interruption coverage and it may trigger civil authority coverage.

### **Matthew Palazola** {BIO 20969450 <GO>}

Okay. Fin, let me just stay with you. I think you had brought up China suppliers and potentially falling under contingent, how does that work internationally. So if a Chinese company was shutdown due to the virus, and that was your supplier, how does that work with a New York State company or interpreting that policy?

### **William C. Wagner** {BIO 20253176 <GO>}

Yeah. It can get complicated because the contingent business interruption coverage can be extended to include orders of civil authority, so let's say, you've got -- you're getting your supply of widgets from China. If their plant is shut down either because of the presence of coronavirus at the plant or in some cases, if there is an order of civil authority in China because coronavirus is present assuming it's considered property damage, it's present near that factory and that shuts down your supply, under most policies that would trigger your own contingent business interruption loss. You would be entitled, if you have to go find another supplier at a higher cost, you loose sales that would be covered contingent business interruption loss.

And also, many of these policies provide coverage for different tiers of suppliers, so it could be a supplier of a supplier, who suffers the loss. So if one of your suppliers is getting component parts, whether it's from China or whether it's from Ohio and they are shutdown and therefore your supplier, because the sub supplier is shutdown, your supplier can't deliver, you might get contingent business interruption coverage for that loss.

And then finally, as I mentioned before and there is a case on this about shippers or entities that facilitate transportation and if they suffer damage that can be contingent business interruption loss as well. There was a flooding in the Mississippi River some years back and the Army Corps of Engineers ran a number of facilities that directly traffic and govern traffic on the Mississippi River.

And when Archer Daniels Midland's couldn't get it -- its crops that it was purchasing from farmers to its processing facilities down the river because of damage to those Army

Corps of Engineer facilities that was considered contingent business interruption and it triggered coverage for ADM. So there are various scenarios and some are going to be covered and some are not. But again, you want to look very closely at your contingent business interruption coverage to see -- to see how far it goes.

**Matthew Palazola** {BIO 20969450 <GO>}

Okay. So this is -- for anyone, who wants to answer. We wouldn't mention specific companies, but if anyone was comfortable, I know that you're focused on kind of mid to smaller companies, but I think a lot of the pain maybe experienced by mid -- can you just focus on mid to large companies, I think a lot of the pain might be focused on smaller companies. Is there any -- from what we hear from public insurers that on these smaller companies, the limits are somewhat low, would you have any comment on limit size, maybe in smaller companies.

And secondary to that I've read some insurers were saying maybe they could limit coverage to the amount of time that it might have taken a premises to clean or remediate, which in their view would have been a short period of time. So could anyone speak on any of those?

**Finley T. Harckham** {BIO 3046626 <GO>}

This is Finley. Maybe I'll just take the first point. The -- that oftentimes the coverage is limited depending on the coverage by dollar amount or by a time period. And yes, you would think you could disinfect rather quickly. But there is an additional coverage that's found in many policies call extended period of interruption coverage, which often provides up to a year, maybe less, a business interruption coverage for the time it takes your business to restore its volume of business and restore its profit level after the business interruption and the property damage have been remedied.

So again, a client for example, that's a museum in New York and they had property damage when these orders are lifted, the question will be whether they get this extended period of interruption coverage because we can well imagine that people are not going to be flocking back to crowded spaces like museums right after these orders are lifted. And so that extended period of business interruption coverage may be very important to little companies as well as large companies because it extends that business interruption coverage out even after the property has been repaired.

**Matthew Palazola** {BIO 20969450 <GO>}

Okay. (Multiple Speakers).

**William C. Wagner** {BIO 20253176 <GO>}

Yeah. This is Bill. I just had a couple of thoughts based on what Finley said. There are also a certain buckets of coverage that many people would gloss over, for example, there's maybe crisis management response. So after you had your contingent business interruption that extends out past the time you're backup and doors are open and

customers coming in, but your -- your number of -- your amount of income is less than what you -- it was previously. There might be coverage to pay for additional advertising and other marketing efforts to help get your business backup and running.

There is also loss assessment coverage. For example, there maybe a bucket of -- for small policies, I think \$10,000, \$25,000 to hire either a council and/or forensic accounts to come in and do a loss assessment to help a company determine how much income its lost.

And I think one of the challenges, one of the things that we're telling our clients is, even if you aren't sure whether your policy has this coverage, and you don't want to spend any -- the money to have an attorney to look at it. There is no harm in submitting a notice of loss. If you don't submit a notice of loss promptly, you could end up leaving your client. So absolutely submit a notice of loss and have that processed timely by the insurance company, it will preserve the statute [ph] limitation, should you have to file a lawsuit later and that's it.

### **Matthew Palazola** {BIO 20969450 <GO>}

Okay. So let me, you mentioned the civil authority, let me jump back to that. You had mentioned it requiring property damage as well, and we've kind of been over whether or not the virus could be construed. Is that -- I guess, one question coming in is, are the civil authority issues they are being raised to reduce the spread of the virus, not necessarily because of property damages spurned on by the virus. Does that weakened the case for civil authority claim? Maybe Finley, if you want to answer that one.

### **Finley T. Harckham** {BIO 3046626 <GO>}

Sure. Yeah, that -- that is a -- an issue that is hotly debated now and it really depends on -- could depend on the geographic location and the timing. So in other words, when they enter these orders in New York City, I think we would all argue the presence of the coronavirus there was the motivating factor. It was -- it's -- sure a fear of spread was also a consideration, but it was there. And there is no doubt that it was there, and it's going to be pretty easy in some areas to establish that when these orders were entered, the virus was present within the distance. It's usually one mile or five miles of the insured premises that where you need to find the property damage to trigger that coverage.

In other areas, it was a prophylactic measure initially to say we don't want this to spread to your areas, so we're going to shut you down as well. But as we're finding now the virus is pervasive, it's everywhere or it seems like soon it's going to be everywhere certainly a lot more places, and I think policyholders will have a good argument again, assuming they can overcome this hurdle, the property damage to say, well there may have been a time when this was a purely prophylactic measure, but it transformed into a concern about actual property damage because the property damage actually arrived.

We had this with Hurricane Katrina claims when they abandoned the City of New Orleans, evacuated the City before the hurricane hit and insurance companies argued well, that



was a prophylactic measure. There was no damage in New Orleans or right nearby at the time that -- that those orders were entered, the evacuation order was entered. But shortly thereafter, of course, the City got cleaned and I think policyholders will have a good argument as long as the virus ends up being physically present at some point in their area that the civil authority will be triggered at some point, even if it started out as a purely preventative measure, which would not be covered.

**Matthew Palazola** {BIO 20969450 <GO>}

Okay. Go ahead.

**William C. Wagner** {BIO 20253176 <GO>}

And I think just -- just to -- and just to piggyback on that comment. I think there are a lot of state and local health departments that are now reporting the present -- the local present of people, who are diagnosed with coronavirus. And you also have a complicating factor is that of the people, who are diagnosed with coronavirus, half of them, I believe are showing no symptoms. They are completely asymptomatic.

So you could have people coming into your place of business, employees, customers, suppliers, who look fine, feel fine, but yet are spreading the virus. And I think on the basis of that, if you know you're going to have a client, you may want to have some testing done, so that you could prove that the coronavirus was present in your place of business down the road, when you make your loss claim.

**Matthew Palazola** {BIO 20969450 <GO>}

So you're saying businesses now should act -- if they plan to file a claim should act now to have that tested because I guess, as we were saying earlier, the virus lives a finite amount of time on surfaces. So is that something you're advising clients to do now is to actually have people coming in testing the premises?

**William C. Wagner** {BIO 20253176 <GO>}

No, testing the premises and also keeping records. For example, if you're a hotel, are you getting any phone calls from guests, who were saying, yeah, I just got diagnosed with coronavirus. I was in your hotel last week on my way down to wherever the destination is or if you're a restaurant, do you have a customer, who calls and he suggests I was at your restaurant yesterday, I just got diagnosed with coronavirus. I want to let you know.

I mean those are the type of things that business owners have to keep diligent records now because if you're not making -- keeping a journal for example, on a daily basis, you're going to forget about these type of events years from now, should your case end up going into litigation, right. So if you can -- if there is grounds to have your property tested, I think you should. If you have secondary evidence of customers, employees, anyone who has been into property, who has been diagnosed with coronavirus, I think you should keep that information.

FINAL

I think we're getting estimates now that just to have the swabs tested, I think is about \$200 per sample, not including the collection costs in the five to seven day turnaround period. So given those circumstances and given that do we know that this loss is going to be for 30 days, 60 days, 90 days, do you want to take some samples on a regular basis to see you can prove your claim, the later point in time. These are all questions that are brand new that we're all sort of feeling our way through the dark, as we go forward, so.

**Matthew Palazola** {BIO 20969450 <GO>}

Okay. So -- go ahead.

**Lauren E. Lonergan** {BIO 20184195 <GO>}

Yeah. Just -- I just want to piggyback one thing that Finley said. So on the civil authority, one of the questions I think that's out there is whether the insured has to prove the presence of the virus in the adjacent property, the property within five miles. My own view would be that if the governmental agency in its order says it's present in property in the vicinity needed to trigger the coverage that -- that alone might be enough, so that especially when we're talking about smaller insureds like restaurants and things like that. That might be a way to make it a bit easier for them.

And so, for instance, one of the things, it would be helpful here is that the governmental orders actually said that. Some of them come very close, but or if they were to make findings, I'm sure that in some cases we know that health authorities are in fact out there testing. For instance, Dr. Birx has been talking about the presence of the virus on the surfaces in the New York subway things like that could be very helpful to especially smaller insureds. So it's something for all of us to think about and consider asking our local authorities to do.

**Matthew Palazola** {BIO 20969450 <GO>}

Okay. So you're saying right now, the local authority orders are, I guess, somewhat light on cause for trigger of claims?

**Lauren E. Lonergan** {BIO 20184195 <GO>}

I think it's going to be. So if they say nothing, then I think the insured will be in a position to present evidence that the reason that they did it was -- was the presence of the virus. If they say was issuing the order because people in our community have COVID-19 that maybe -- maybe more challenging. It might have to be -- it might be necessary to show that there was -- that the presence of people were the contaminants, and also means there's contaminants on the surfaces of the property that is needed to trigger the coverage, but they can make those findings.

And I think we've been looking at the orders, many of them are -- they are very helpful especially for smaller insureds, but they could go a bit further. And I think make those findings in the actual orders, which would and they could do it now. I mean even if -- as Finley certainly suggested, it was initially intended to be preventative because they didn't

Bloomberg Transcript

know. I think they probably know better now, whether it's present on surfaces within the community, and I think that if they were to reissue orders now with specific findings that would be extremely helpful.

**Matthew Palazola** {BIO 20969450 <GO>}

Okay. So let me just jump to some questions from the webinar. For anyone, is there a comment on the jurisdiction over BI claims. Is it the location of the insured premises or the state of the insurer?

**Finley T. Harckham** {BIO 3046626 <GO>}

This is Finley. That's an excellent question. Because as I think we've all alluded to, these issues are going to be decided in each state, and it's not uncommon that you get different results from courts in different states on interpreting the exact same policy language. It's happened on lots of important issues in insurance coverage. So you have that you have -- what you have that you call a choice of law issue.

If you're a small business, and you've got one location in one state, it's probably pretty clear that unless there is a choice of law provision in the policy, which says the different state law applies, it's probably going to be the law or [ph] the state, where your business is. But if you're a company with operations throughout the country, maybe throughout the world, there maybe a choice of law provision in the policy, often times a default is to either the place of your headquarters or to a place, where the damage was sound, but there are various legal tests for that and different courts use different tests for that.

So if the courts end up all over the math in terms of whether there is coverage for this type of situation, we lawyers are going to engage in a lot of analysis of figuring out where we want to file for our clients, where they've got the best chance of getting a favorable law applied and sometimes that's a complicated question. But if you're a little business, you're located in one state chances are that state law is going to be applied unless there is a choice of law provision specifically in the policy.

**Matthew Palazola** {BIO 20969450 <GO>}

Okay. Great. One more from the webinar maybe Bill or Lauren can take this. Do most policies include an aggregate limit that may come into play.

**William C. Wagner** {BIO 20253176 <GO>}

Yeah. (Multiple Speakers). Yeah, most policies have a policy limit that they will pay out either on the business interruption, contingent business interruption or if that a subcategory it's limited by time, as Finley said earlier, 60 days one year on the contingent business interruption up to the policy limit. So I don't think I'll ever pay out more than the policy limit.

**Matthew Palazola** {BIO 20969450 <GO>}

Okay. And but there are -- a total aggregate limit, so if one piece of the BI perhaps could that chew up the entire aggregate limit on the policy or would a sub-limit (Multiple Speakers).

**William C. Wagner** {BIO 20253176 <GO>}

It depends. It depends, if there is a sub-limit or if it just applies against the actual limit for the policy. That's going to be again, on a policy-by-policy basis well, you would just have to look at policy.

**Matthew Palazola** {BIO 20969450 <GO>}

Okay. How about this one. So we've talked about property lines of business in BI pretty exclusively here. What do you think exposure is in casualty lines, so general liability, directors and officers, and even you probably don't get into workers comp, but do you think -- how do you think the size -- the magnitude of that. I guess, I'd call it risk to insurers measures up against this property side? How about Finley?

**Finley T. Harckham** {BIO 3046626 <GO>}

I think that's the next wave and so we're going to have to see what happens. There is no doubt it seems that there are going to be suits against companies for allegedly mishandling this coronavirus situation either with their employees, and there are actually well, maybe some interesting issues in terms of workers comp or their workers comp applies or not, where you're sending your workers to work at home and they can attract the disease.

So there could be some workers comp related issues, general liability related issues of people saying, I was injured because you mishandled the response to this situation. And then directors and officers, the policies maybe implicated if shareholders may well bring suits down the road to say company's Board mishandled the situation or was unprepared for the situation. But I think -- I think that's kind of the next wave that we -- at least I haven't seen much of that type of allegation thus far. But I think lots of policyholders are concerned that -- that maybe coming down the road.

**Matthew Palazola** {BIO 20969450 <GO>}

Okay. So Bill as a follow-up --

**William C. Wagner** {BIO 20253176 <GO>}

This is Bill. Just to -- yeah, just -- just to piggyback off what Finley just said. So there are some lawsuits that are being filed and the ones to watch the cruise line industry. So there, the CDC has actually done studies of the crew members and the passengers and found that, for example, there was a CDC study and it's morbidity and mortality weekly report of March 23 that said that on the Diamond Princess, for example, there were crew members that were asymptomatic and during cruise A and then by the time of cruise B, they became symptomatic and then passed on the virus to passengers.

FINAL

So there is a lawsuit that's already been found, I believe, in relation to that where it's pretty easy to prove that, yes, my virus occurred while I was at cruise -- a passenger on a cruise line in the middle of the ocean. Now the more difficult problem is going to be, if you claim that you contracted coronavirus from going to a restaurant or going to a hotel that is going to be a much higher difficult, much more difficult burden to prove because then you're going to have to prove that you actually did contracted that the virus was present at the restaurant, for example, at the time that you were there that there was a greater chance that they almost occurred from that location and your damage is related to that as opposed to catching up from somewhere else.

Another issue on the directors and officers cases that we've seen, there have been some lawsuits had been filed, where investors have sued corporations and management on the basis of shareholder lawsuit saying that the management downplayed the threat of the coronavirus, they downplayed the risk. And as a result of that investors continued to invest good money after bad [ph] into these companies. And so there are shareholder lawsuit saying that as a result of that fraudulent statement or misrepresentation that they have been harmed. And I think with the market bottoming out, I think you're going to find those suits much more prevalent as time goes on.

#### **Matthew Palazola** {BIO 20969450 <GO>}

Okay. That makes a lot of sense. So follow-up question from the webinar. What do you think about companies, who may not have coverage turning around and perhaps suing their Insurance agents and brokers for not properly covering them? How about Finley take that one?

#### **Finley T. Harckham** {BIO 3046626 <GO>}

It's -- again may depend upon the jurisdiction that they're in, in New York, where [ph] I practice. The insurance broker generally has no duty to tell or advise the policyholder about what types of coverage, they need or should get. They are really an order taker. But if you sign a client services contract in which you agree to provide advice as to what type of coverage to get then that could open the door to sue against the broker for failing to properly advise the client.

So if you have a -- at least in New York, you need that type of client services relationship, in some other states, you don't need to have that if you're the broker of record then that can impose duties upon you without even having a broad and specific agreement to advise the client. But it really varies from -- from jurisdiction to jurisdiction and depending on whether or not, you have an actual client services agreement with your broker or it's been there is -- the other issue of whether or not it's -- this was something that the broker should have anticipated and whether there was any negligence in any event. But the threshold issue of whether or not you can go after them may depend on state law and the nature of your contract with the broker.

#### **Matthew Palazola** {BIO 20969450 <GO>}

Okay. So Bill, go ahead.

Bloomberg Transcript

## **William C. Wagner** {BIO 20253176 <GO>}

Yeah. One more point. I've seen some lawsuits, where restaurants are filing lawsuits against their broker saying, for example, a virus or bacterial or micro organism contaminant that is the highest risk that I have as a restaurant owner next to a slip and fall, right, is that something is going to be passed on from my restaurant and injure the patron and is that something I expected my broker to look at and procure insurance for at least make the recommendation. So I could make a conscious decision on whether or not to buy that insurance. That's one thing.

I also encourage people don't -- right now be discouraged that there is no insurance coverage because we talked about this in the pre-call, but there are some states that are advancing legislation to try to read these type of virus exclusions out of the policy. Ohio, Massachusetts have a new law. New Jersey proposed a law, it was tabled. But there were some states that are considering whether for small businesses, I think Ohio is 150 employees or less.

I think, Massachusetts, maybe 100 employees or less. If you bought a commercial property policy that had business interruption coverage that there is some legislation to propose that you won't have to worry about, was there a direct physical property damage, that is what is it, there is business interruption coverage. They will treat the virus as resulting in property damage and also that they will read some of these exclusions, some of these virus exclusions out of the policies. So I would again, make a claim whole tight [ph] and it may be a long -- a long road ahead. But I wouldn't abandon any claims at this point.

## **Matthew Palazola** {BIO 20969450 <GO>}

Okay. That was going to be my last topic. So maybe Finley, if you don't mind weighing in on that proposed legislation. I think I would assume insurers would fight pretty hard again something like that. What do you think the -- if you could handicap at the odds of something like that happening actually even or?

## **Finley T. Harckham** {BIO 3046626 <GO>}

Well, there were a couple of different ways it can be done. One is to try and legislate a change in the terms of the policies. And I think, of course, the insurance companies are going to fight that. There are constitutional problems with that because you have the right to contract, people have the right to contract. And it seems to me the insurance industry will have a pretty good argument that the states cannot pass laws to change existing contracts.

Having said that there is another way that some of these states that Bill mentioned are going about it which, for example, the New Jersey bill, which says, we're going to read the -- the virus exclusion out of these policies or any problem of property damage, we're going to have the Insurance company adjust the claim and then we're going and pay the claim and then they'll be reimbursed by the state, where they will adjust the claim and the state will pay the claim.

FINAL

I think if states are really willing to incur that kind of a cost, that's a much more realistic way of trying to do it. If -- the insurance companies, I think it's probably still opposed because they don't want to be spending a lot of time adjusting claims and incurring expense. But at least that's a plausible way of getting around the legal challenges, if the state -- if the state is willing to ultimately foot the bill for the damage and maybe reimburse the insurance companies, who are having to adjust the losses, then you get around this problem of we've got a contract and we're entitled to enforce it.

**Matthew Palazola** {BIO 20969450 <GO>}

Okay. So we're kind of coming on time. We got a couple of questions left in the queue, but I think we'll try to follow-up with them offline. I really want to thank everyone that this is really an informative call. I think this is going to be an issue. It's going to be with us for a long time. So you can stay tuned on BI INSUR GO on the Bloomberg Terminal, and really thanks a lot to all of our call participants. Thank you.

**Finley T. Harckham** {BIO 3046626 <GO>}

Thank you.

**William C. Wagner** {BIO 20253176 <GO>}

Thank you.

Bloomberg Transcript

*This transcript may not be 100 percent accurate and may contain misspellings and other inaccuracies. This transcript is provided "as is", without express or implied warranties of any kind. Bloomberg retains all rights to this transcript and provides it solely for your personal, non-commercial use. Bloomberg, its suppliers and third-party agents shall have no liability for errors in this transcript or for lost profits, losses, or direct, indirect, incidental, consequential, special or punitive damages in connection with the furnishing, performance or use of such transcript. Neither the information nor any opinion expressed in this transcript constitutes a solicitation of the purchase or sale of securities or commodities. Any opinion expressed in the transcript does not necessarily reflect the views of Bloomberg LP. © COPYRIGHT 2022, BLOOMBERG LP. All rights reserved. Any reproduction, redistribution or retransmission is expressly prohibited.*