



# NATIONAL PERSPECTIVE: THE INSURANCE INDUSTRY'S RESPONSE TO COVID-19



# SETTING THE STAGE

**511,603 cases & 23,067 deaths worldwide**

**All 50 US States have declared a State of Emergency**

**20 States have issued state-wide Shelter In Place orders**

- 14 others have more specific restrictions

**Week-ending March 21<sup>st</sup> Jobless Claims Hit 3.28 Million**

- Previous record was 695,000 on October 2<sup>nd</sup>, 1982

**\$2.2 Trillion Stimulus Package Passed By Senate on March 25<sup>th</sup> & By House on March 27<sup>th</sup>**

# THE CHALLENGE

*“If there were no exclusions, the lost business here is in the trillions. To size that, I think that the total 9/11 losses were around \$40B (in 2001 dollars). The TRIA program put into place has a total liability cap for government and insurer TRIA losses of \$100B. If losses exceed that amount, then everyone gets paid pro rata. SO if there are \$1 trillion in losses, everyone would get 10 cents on the dollar.”*

*-Scott Sinder Chief Legal Officer | The Council of Insurance Agents & Brokers*

# AGENDA

NATIONAL LEVEL  
RESPONSE

DETAILED COVERAGE  
ANALYSIS

HOW IMA IS  
RESPONDING

# PANELISTS



**Robert L. Cohen**  
Chairman & CEO | The  
IMA Financial Group



**SueAnn V. Schultz**  
Chief Administrative Officer &  
Corporate Counsel | The IMA  
Financial Group



**Bob Reiter**  
President | The IMA  
Financial Group



**Joel Wood**  
Senior Vice President,  
Government Affairs |  
The Council of Insurance  
Agents & Brokers



**Lauren E. Tucker  
McCubbin**  
Shareholder, Practice  
Chair | Polsinelli



**Stacy Carpenter**  
Commercial Litigation  
Co-Chair | Polsinelli



**Carlyle W. Hall III**  
Commercial Litigation  
Co-Chair | Polsinelli

# PANDEMIC: D.C. AND INSURANCE INDUSTRY RESPONSE

JOEL WOOD



# PHASE ONE: MARCH 6

## \$6.5 billion for HHS

- 3.4 billion for Public Health and Social Services Emergency Fund
- \$2.2 billion for Centers for Disease Control and Prevention
- \$836 million for National Institutes of Health
- \$61 million for the Food and Drug Administration
- Waived Medicare telehealth restrictions

## \$1.25 billion for State Department and USAID

- Includes funds for global health programs, humanitarian and health assistance, diplomatic operations, evacuation and emergency preparedness costs

**Enabled Small Business Administration to provide about \$7 billion in disaster loans**

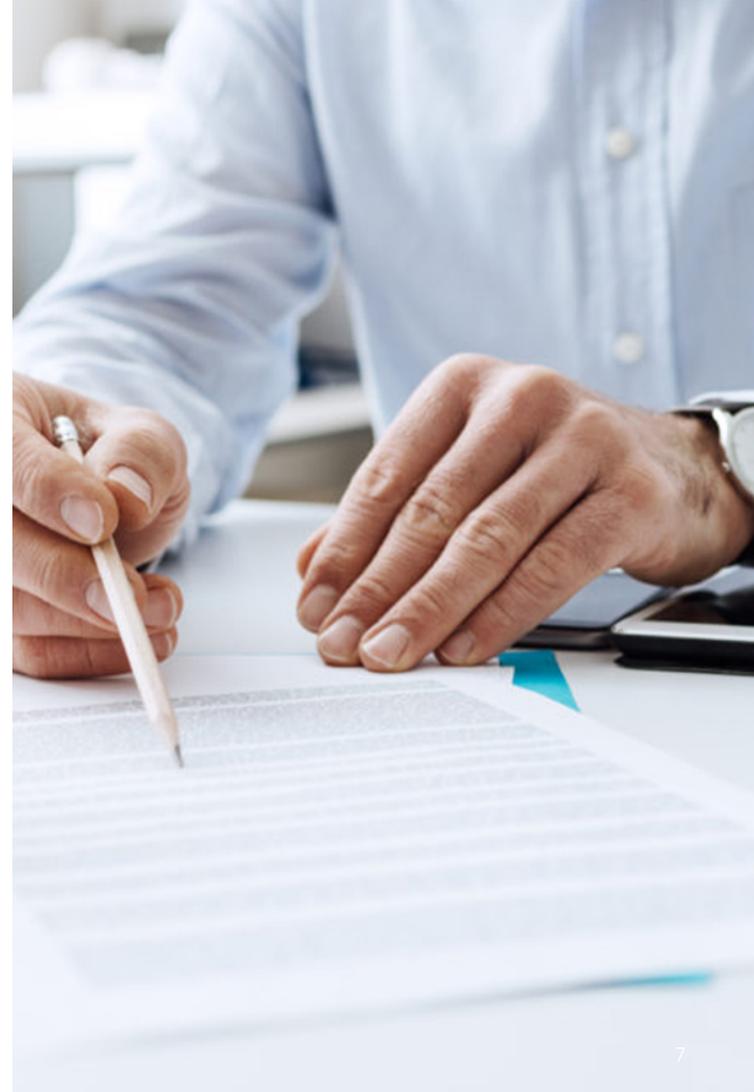
# PHASE TWO: MARCH 18

## Created emergency paid leave programs to respond to the outbreak

- Private sector employers with fewer than 500 workers and government entities have to provide as many as 12 weeks of partially paid family leave under the FMLA to care for a child whose school or day care has closed
- Employers to provide full- and part-time workers with two weeks paid sick time, including for a quarantine order or to care for another affected individual
- Labor Department can exempt small businesses with fewer than 50 workers from the paid leave requirements
- Refundable tax credits for employers to cover costs under the law's leave programs
- Includes amounts employers pay for a worker's health insurance plan
- Similar refundable credit for self-employed workers

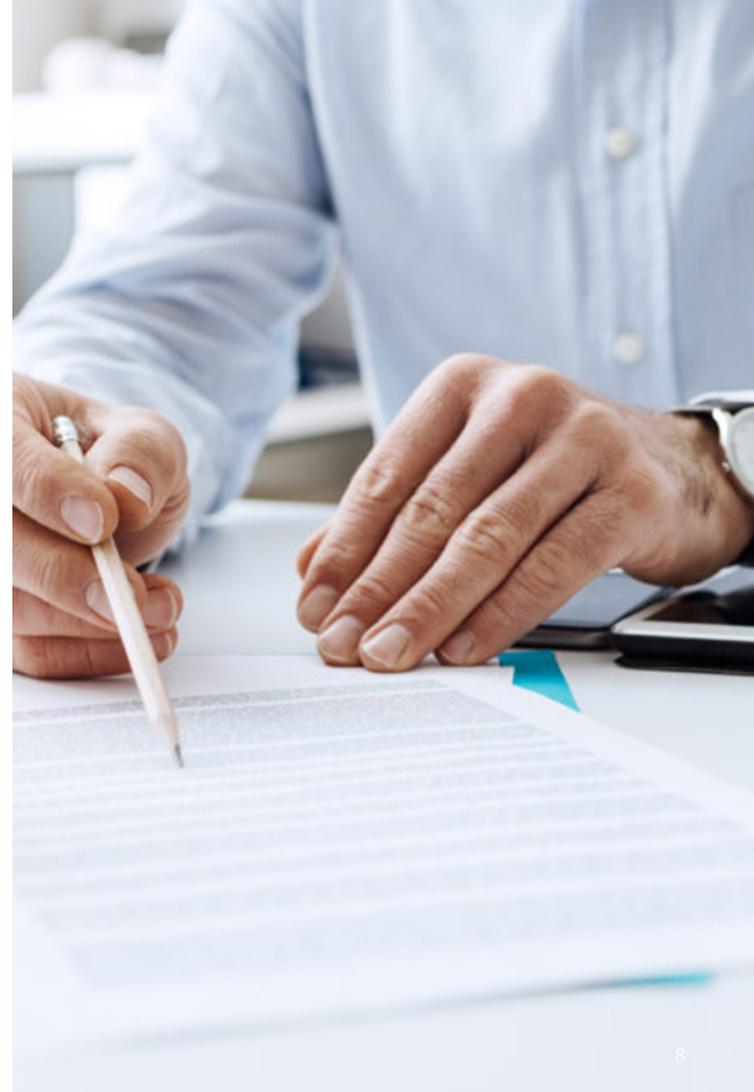
# PHASE THREE: ENACTMENT TODAY – CARES ACT

- Recovery checks of \$1,200 for individuals with AGI up to \$75,000 or \$112,500 for those with a head of household filing. All joint filers, with AGI up to \$150,000 are eligible for \$2,400. Those amounts increase by \$500 for every child
- \$600 maximum unemployment benefit per week (“ensures laid-off workers receive full pay for 4 months”)
- \$58 billion for airlines - prohibited from stock buybacks and CEO bonuses
- \$150 billion Marshall Plan for hospitals
- Additional \$349 billion in loans for small businesses to cover payroll and other expenses – bans stock buybacks for the term of the government assistance plus 1 year for any company receiving aid



# PHASE THREE: ENACTMENT TODAY – CARES ACT (CONT'D)

- Retention tax credit for employers to encourage businesses to keep workers on their payrolls
- Waiving penalties for withdrawing as much as \$100,000 from retirement plans
- Technical corrections and other changes to 2017 tax overhaul
- Several modifications to the emergency leave programs in the second package
- Creates Treasury Department Special Inspector General for Pandemic Recovery



# PHASE THREE: SBA LOANS

Allows SBA to provide federally-backed loans from February 15, 2020 to June 30, 2020 to eligible businesses to cover operational costs, including payroll, rent, health benefits (and insurance premiums), etc.

No collateral, personal guarantees, or subsidy recoupment fees required (interest rate set at 2/15/20 level)

**Eligible businesses = 500 or fewer employees**

- Leeway for businesses with multiple “small” locations that provide accommodation and food services
- Sole proprietors, independent contractors, and self-employed individuals are eligible
- Some relief from SBA affiliation rules for certain businesses

## PHASE THREE: SBA LOANS (CONT'D)

2 eligibility criteria = good-faith certification of need for the loan + agree to not fire workers

The maximum loan amount is a multiplier (2.5x) of average monthly payroll costs up to \$10M cap

Businesses can use loans for almost all operating costs (with limits on individual comp above \$100K, comp for non-U.S. workers, and “double dipping” for Families First paid leave wages already receiving credit)

Debt forgiveness up to the principal loan amount for certain costs incurred during the covered period

- Forgivable amounts = payroll costs; interest payments on loan obligations; rent; and utilities
- Forgiveness amounts reduced for firing employees or cutting wages

# PHASE FOUR?

## Focus shifting to Phase Four

- More Extensive, Prospective in Scope
- Will likely include a “fixes” Section to Address Phase III Issues
- Timing unclear: staff bandwidth issue, needs White House support
- GOP commitment to another vast stimulus?
- A broader federal facility?



# A FEDERAL FACILITY FOR BUSINESS CONTINUATION?

Insurance industry consensus today

Policyholder/industry letter expected today or in next couple of days

Treasury Department/WH interest unclear

How would such a facility jibe with CARES Act?

Total consensus among brokerage community that further large stimulus essential

# COVERAGES POTENTIALLY IMPLICATED BY COVID-19

LAUREN E. TUCKER McCUBBIN



# COVERAGES

**Property Policies**

**Event Cancellation Policies**

**Supply Chain Interruption Policies**

**Trade Disruption Policies**

**Liability Policies**

**Pollution Policies**

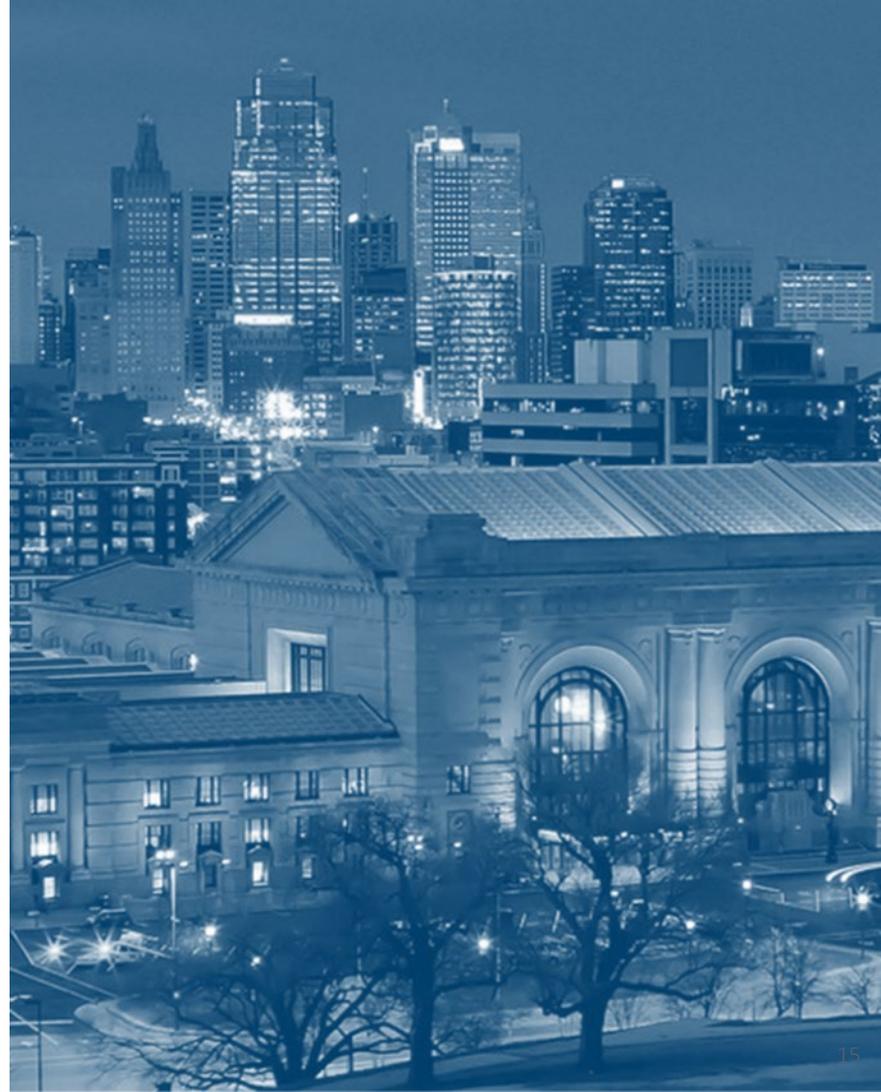


# PROPERTY INSURANCE BASICS

Property Damage

Business interruption

Extra Expense



# TRIGGERING COVERAGE

## A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

Insuring agreement from ISO Form CP 00 10 10 12 (2011)

# “DIRECT PHYSICAL LOSS OR DAMAGE”

**Does this require the presence of the virus on the property?**

- Existing case law is unclear – minority position supports coverage in the absence of the virus on the premises
- Legislative efforts underway to try to encourage coverage
- Lawsuits already have been filed, and courts may be eager to provide relief to insureds

# COVERED CAUSE

**What is causing (directly, concurrently, or otherwise) the loss or ensuing loss?**

- “All risks” – is there an exclusion that eliminates coverage?
- “Specified peril” – is the loss caused by a listed peril?





# BUSINESS INTERRUPTION

**Provides coverage for losses suffered during the “Period of Restoration” due to suspension of operations as a result of a Covered Cause of Loss**

# “SUSPENSION” OR INTERRUPTION

## Depends on the policy form:

- Could be “slowdown or cessation of your business activities”
- Could be that a part or all of the described premises is rendered untenable
- Could be that operations are “interrupted”

**Coverage therefore may not be triggered if operations are simply partially impeded or have to be modified (i.e., working remotely, or restaurants allowed to serve curbside or delivery)**

# CIVIL AUTHORITY

## 5. Additional Coverages

### a. Civil Authority

In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations.

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

# POTENTIALLY APPLICABLE EXCLUSIONS

**Virus Exclusions**

**Exclusions for Actions or Inactions of the Insured**

**Governmental Action Exclusions**

**Failure to Mitigate**

**Pollution Exclusions**

**Other Exclusions unique to the facts**



# COVID-19, OTHER COVERAGES

CARLYLE W. HALL III



# CGL COVERAGE

**Ronald and Eva Weissberger v. Princess Cruise Lines (and many more)**

**Will also see Premises Liability lawsuits**

**Is there an “occurrence”?**

**Is it excluded?**

- SARS – Virus/Pandemic exclusions
- Pollution Exclusion
- Contract Exclusion

# PL AND EPL COVERAGE

## Professional Liability Coverage

- Healthcare Providers
- Telemedicine
- Lawyers (difficulties practicing remotely, etc.)
- Auditors/consultants working from afar

## Employment Practices Liability Coverage

- More sick workers, leave issues (incl. FMLA), fairness issues, etc.



# EVENT CANCELLATION

## Event Cancellation, Abandonment, Curtailment, Postponement and Relocation Policies

- Mostly in Hospitality and Entertainment Space
- Conference and event cancelations
- Typically do not exclude communicable disease



**Polsinelli's cross-disciplinary COVID-19 blog provides companies tools and information needed to effectively and lawfully protect their employees and business.**

Visit our blog: [covid19.polsinelli.com](https://www.covid19.polsinelli.com)

# CYBER RISKS

## Cyber Policies

- Dramatically Increased Cyber Risks
- Spoofing, Phishing, etc. on the rise
- Remote working not only in your company, but vendors abroad
  - Diligence on your vendor contracts
  - Steps they are taking to reduce risk?
- Good time to review your Cyber Risk coverage with your broker!



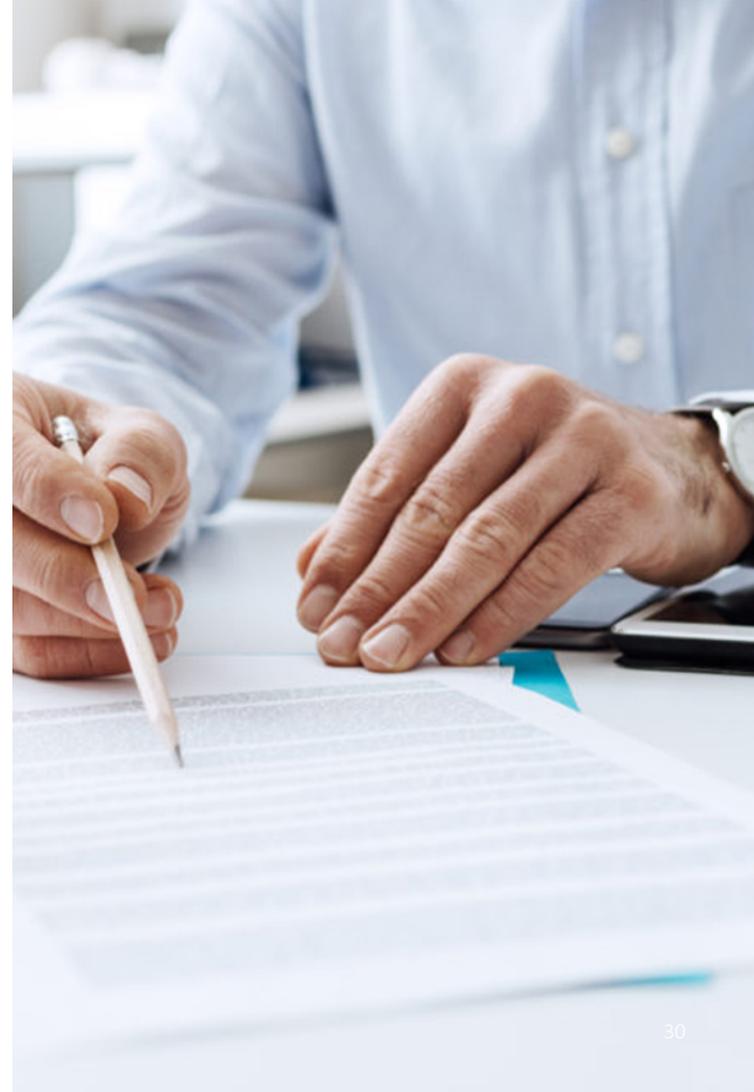
# RESPONSE TO THE ANTICIPATED VOLUME OF CLAIMS

STACY CARPENTER



# RESPONSE TO THE ANTICIPATED VOLUME OF CLAIMS

- Insurance Company Position
- Regulation
- Legislative Fixes
- Litigation
- Other



# INSURANCE COMPANY POSITION – NO COVERAGE

## Insurance Industry Response To Letter from the House of Representatives

- “Business interruption policies do not, and were not designed to , provide coverage against communicable diseases such as COVID-19.”

## Insurance Information Institute CEO

- “insurers have investigated and modeled pandemic scenarios as they do other catastrophes and found it is not feasible to underwrite the risk in a way policyholders would be able to buy.”

## American Property Casualty Insurance Association CEO

- It is important to defeat efforts to “impose retroactive coverage.”

# REGULATION – STATE DIVISIONS OF INSURANCE

## NY

- Requests for Information
- Number of policies
- Explain coverage each policy offers for COVID-19 and prepare a statement for policy holders

## Financial Terms

- Many states or either encouraging flexibility or ordering relief for premium payments and cancellations

## Auto Policies

- Food Deliver

## Liability Coverage

- Facilities providing childcare and meals to the community

## Workers' Compensation

Relaxation of **Claim Submission** Requirements

# LEGISLATIVE FIXES

## New Jersey – Bill 3844 Introduced 3-16-20

Three Steps:

### STEP 1

Special purpose assessment of Insurance Companies to create a Fund.

### STEP 2

Retroactively modify every property policy with Business interruption coverage to include coverage for business interruption due to global virus transmission or pandemic.

### STEP 3

The insurer can apply for relief and reimbursement from fund for amounts paid.



# LITIGATION

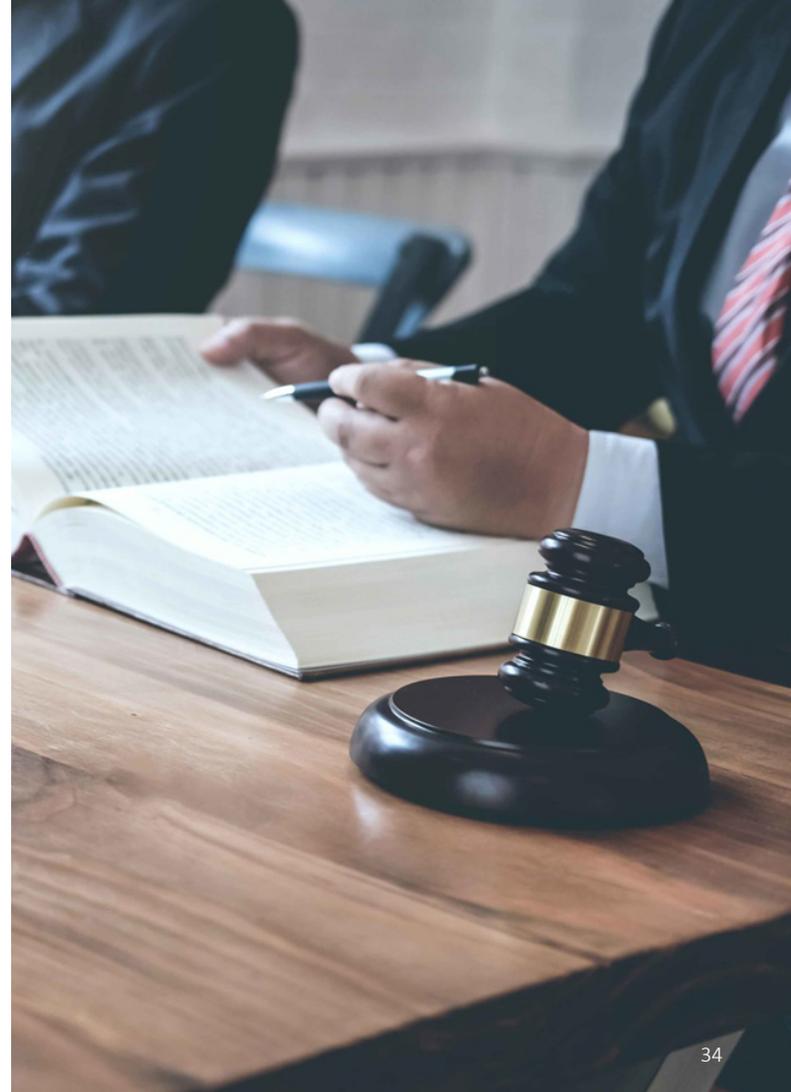
## Declaratory Judgment Lawsuits By Policy Holders

### Oceana Grill in New Orleans and French Laundry in Napa

- Is a direct physical loss because virus physically impacts property and infects and stays on the surface of materials
- Similar to lead or gaseous fumes
- Government orders trigger civil authority provision
- Exclusion for biological materials such as pathogens does not exclude losses from virus or global pandemic Chickasaw Nation and Choctaw Nation in Oklahoma

### Chickasaw Nation and Choctaw Nation in Oklahoma

- Pandemic and infection created direct physical loss – no specificity about how
- Interruption by civil authority



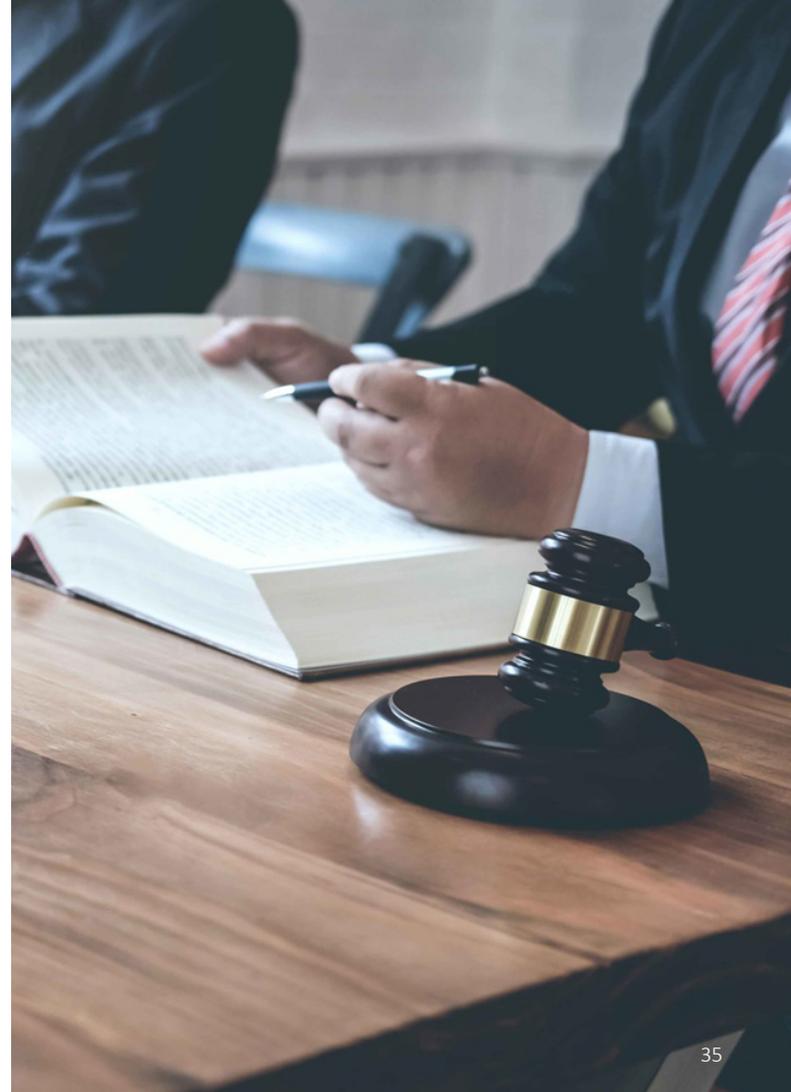
# LITIGATION

## Question of Standing

- No denials and could be dismissed
- Courts closed for 60 days
- No discovery – at least 6 months
- Discovery – a year or more
- Appeals

## Declaratory Judgment Actions by Insurance Companies

## Breach of Contract Claims after Denials



# OTHER

## Funds

- Surcharge on premium?
- Federal Government?
- Handled like the Asbestos Trust Funds
- NJ bill

## Insurance Company Bankruptcy

- Insurance Guaranty Fund
- Probably no Recovery

# IMA'S RESPONSE TO COVID-19

BOB REITER



# IMA'S RESPONSE TO COVID-19



- 1. Created the IMA COVID-19 Response Team**
  - Includes claims advocates, loss prevention, team leads and IMA leadership
  - Response team has carefully reviewed reactive client issues arising from COVID-19 and proactively provided guidance on how best to react
- 2. Stood up a Client Alert Center with dozens of updates, alerts and pieces of guidance**
  - Weekly webinars to provide updates and answer client questions in real-time
- 3. Created an online Claims Toolkit to help clients begin the claims process**
  - Includes practical guidelines on timeline, documentation gathering, retention and more