

# LAMBdin & CHANEY, LLP

## CLAIMS GAZETTE

### Inside this issue:

First Coronavirus Business Interruption Suit filed	2
First Coronavirus General Liability Suit Filed	2
Other News Worthy to Print	3



L. Kathleen Chaney, CPCU is a founding partner of Lambdin & Chaney, LLP. She has tried over three dozen jury trials and is an insurance expert. [kchaney@lclaw.net](mailto:kchaney@lclaw.net)

### **EXTRA, EXTRA:**

Refer to the newly enacted Division of Insurance Regulation 5-2-03 for guidance in complying with requests for auto policy information as required by C.R.S. § 10-3-1117, which took effect on January 1, 2020. Failure to comply results in a \$100-per-day penalty plus attorney fees. Insurers are also required to maintain records of all requests for three years from the date of the request.

Excellence In All That We Do

## Effect of the Coronavirus Pandemic On the Insurance Industry

The Year 2020 will be like no other in our lifetimes. As I'm writing this, schools, restaurants, bars, gyms, movie theaters, numerous retail stores and government offices are closed for the foreseeable future. The economic impact is certain to be catastrophic leading to the Great Depression II.

What can the insurance industry expect to see as this plays out in the coming months? Certainly an increase in claims from a variety of sources.

Job losses typically result in an increase in the frequency and severity of workers comp claims. Layoffs will trigger EPLI claims, such as discrimination claims and WARN Act claims (which statutorily requires advance notice of closings and mass layoffs).

A devastated economy will also fuel a wave of insurance fraud as cash-strapped consumers become desperate to not only make ends meet but to simply survive. There will be a sharp increase in staged auto accidents, slip-and-fall claims and arson claims.

Legitimate claims will be padded. There will be agent fraud.

There will be an avalanche of claims under event cancellation policies, and first party policies for business income interruption coverage.

The expected sharp increase in pandemic-driven claims will be along with the expected weather related disasters that aren't driven by economic events, such as hail, hurricanes and tornados.

In sum, the insurance industry will be challenged as never before.

Lambdin & Chaney is uniquely situated to help guide insurers and employers through this unprecedented time. As an exclusive insurance defense and coverage firm for 20 years with specialized experience in employment-related claims and coverage expertise, we remain open for business and fully operational. Call us at 303-799-8889, or email me at [kchaney@lclaw.net](mailto:kchaney@lclaw.net). You will get a response the same day.

## FIRST CORONAVIRUS BUSINESS INTERRUPTION SUIT FILED

Well that didn't take long. On March 16, 2020, Cajun Conit, LLC filed a lawsuit against Certain Underwriters at Lloyd's London in civil district court in New Orleans, Louisiana.

Cajun Conit operates the restaurant Oceana Grill located in the French Quarter. New Orleans' mayor restricted restaurants to delivery only.

The seafood restaurant is seeking a judicial declaration that the government-mandated public gathering restriction triggers the Civil Authority provision under the Lloyd policy.

Specifically, the complaint seeks a declaration that "the policy provides coverage to Plaintiffs for any future civil authority shut-downs of restaurants in the New Orleans area due to physical loss from Coronavirus contamination and that the policy provides

business income coverage in the event that the coronavirus has contaminated the insured premises."

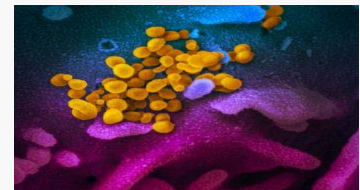
The complaint alleges that "the global pandemic is exacerbated by the fact that the deadly virus physically infects and stays on the surface of objects or materials, 'fomites,' for up to twenty-eight days, particularly in humid areas below eighty-four degrees."

The complaint further states that it is "clear that contamination of the insured premises by the Coronavirus would be a direct physical loss needing remediation to clean the surfaces of the establishment."

Importantly, the complaint does not outline the relevant policy language.

Typically to trigger business interruption coverage there must be physical damage to property. Oceana Grill will have the burden to prove that the presence of the coronavirus causes physical loss to the affected premises. As argued in its complaint, Oceana Grill maintains that "similar to the Coronavirus, Louisiana Courts have interpreted that the intrusion of lead or gaseous fumes constitute a direct physical loss under insurance policies that would need to be remediated."

Critically, the complaint alleges that the Lloyd's policy does not contain a "virus" exclusion.



## FIRST CORONAVIRUS GENERAL LIABILITY SUIT FILED

On March 9, 2020, Princess Cruise Lines Ltd was sued by a South Florida couple who claimed the cruise line company acted with gross negligence by failing to take precautions to prevent a coronavirus outbreak after two passengers left the

ship with symptoms. In addition to triggering Coverage A for bodily injury, expect lawsuits to be drafted to trigger Coverage B for false detention and imprisonment.

If coverage is triggered,

however, standard exclusions for contaminants or viruses need to be considered.



## OTHER NEWS WORTHY TO PRINT

- On December 19, 2019, in ***People v. Gregory***, the Court of Appeals in a matter of first impression ruled that where the victims' families enter into a settlement agreement with defendant and his insurer that is clearly intended to cover all liabilities and agrees to indemnify defendant for anything additional he has to pay, the defendant has met his burden of going forward to show the agreement covered all categories of loss for which criminal restitution could be imposed.
- On January 30, 2020, in ***Harvey v. Centura***, a division of the Court of Appeals interpreted C.R.S. § 38-27-101 as not to require a hospital to bill Medicare and Medicaid for medical services before creating a lien against the person who received the services when that person is covered by other insurance.
- However, on March 5, 2020, in ***Garcia v. Centura***, a different division of the Court of Appeals reached the opposite decision, holding that C.R.S. § 38-27-101 requires a hospital to bill Medicare before filing a lien.
- On February 13, 2020, in an unpublished opinion in ***Roulston v. State Farm***, the Court of Appeals rejected Plaintiff's argument that the insurer cannot introduce evidence unless the claim file reflects that the evidence was specifically relied upon, noting that the challenged evidence was contained in the claim file. The Court of Appeals also affirmed the trial court's exclusion of Plaintiff's attorney's demand letter, which was replete with hearsay and legal argument of her counsel, holding that its admission would have been unduly prejudicial.
- Colorado's new anti-SLAPP statute, C.R.S. § 13-20-1101, took effect on July 1, 2019, which we successfully used in a motion to dismiss bad faith counterclaims against an insurer who filed a declaratory judgment action to seek a coverage determination. The statute allows for a special motion to strike within 63 days to remove any claim or allegation asserting tortious conduct in connection with a public issue, such as the right to seek redress with a court. In other words, a claimant cannot counterclaim for bad faith for an insurer seeking a declaratory judgment of its coverage obligations. The prevailing party is entitled to fees and costs, and the order on the motion to strike is subject to an interlocutory appeal.
- The new damages caps in Colorado are:

For all claims for relief that accrue on and after January 1, 2020:

FOR C.R.S. 12-47-801(3)(c) the adjusted limitation is \$368,260.

FOR C.R.S. 12-47-801(4)(c) the adjusted limitation is \$368,260.

FOR C.R.S. 13-21-102.5(3)(a) the adjusted limitation is \$613,760, which may be increased by the court upon clear and convincing evidence to a maximum of \$1,227,530.

FOR C.R.S. 13-21-102.5(3)(b) the adjusted limitation is \$613,760.

FOR C.R.S. 12-21-203(1) the adjusted limitation is \$571,870.

FOR C.R.S. 13-21-203.5 the adjusted solatium amount is \$114,370.

Lambdin & Chaney, LLP  
4949 S. Syracuse Street, Suite 600  
Denver, CO 80237



**L|C** LAMBDIN & CHANEY, LLP  
ATTORNEYS AT LAW

303-799-8889 [www.lclaw.net](http://www.lclaw.net)

